

BORDER SECURITY—2015

HEARING

BEFORE THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

**DEFERRED ACTION ON IMMIGRATION: IMPLICATIONS AND
UNANSWERED QUESTIONS, FEBRUARY 4, 2015**

**VISA WAIVER PROGRAM: IMPLICATIONS FOR U.S. NATIONAL
SECURITY, MARCH 12, 2015**

**SECURING THE SOUTHWEST BORDER: PERSPECTIVES FROM
BEYOND THE BELTWAY, MARCH 17, 2015**

**SECURING THE BORDER: ASSESSING THE IMPACT OF
TRANSNATIONAL CRIME, MARCH 24, 2015**

**SECURING THE BORDER: UNDERSTANDING AND ADDRESSING THE
ROOT CAUSES OF CENTRAL AMERICAN MIGRATION TO THE UNITED
STATES, MARCH 25, 2015**

**SECURING THE BORDER: DEFINING THE CURRENT POPULATION
LIVING IN THE SHADOWS AND ADDRESSING FUTURE FLOWS,
MARCH 26, 2015**

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Committee on Homeland Security and Governmental Affairs



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DEFERRED ACTION ON IMMIGRATION: IMPLICATIONS AND UNANSWERED QUESTIONS

WEDNESDAY, FEBRUARY 4, 2015

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:01 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Paul, Lankford, Ayotte, Ernst, Sasse, Carper, Baldwin, Heitkamp, Booker, and Peters.

OPENING STATEMENT OF CHAIRMAN JOHNSON

Chairman JOHNSON. This hearing will come to order.

First of all, I would like to thank all the witnesses for your very thoughtful testimony. I have read it and appreciate you taking the time to be so thoughtful. I want to thank all the people attending this very important hearing.

I do have a written opening statement that, without objection, I would like to enter into the record.¹ Hearing none, so ordered.

The subject of this hearing is complex. That really made an impression on me as I was reading the testimony. I come from a manufacturing background. This, to me, is the definition of a real problem. There are no easy solutions. So, the attempt of this hearing is really trying to, in a very honest, very forthright way, lay out the problem and what we need to do to try and grapple with the problem.

Let me say, the problem starts with the fact that we do not have secure borders. We have not had secure borders for decades, and that creates the second problem, which is more the subject of the hearing today. As a result of those borders that are not secure, we have almost enticed people to come into this country illegally. Now, we have a population estimated somewhere between 11 and 12 million people in this country illegally. That is a problem. That is not good for them. That is not good for this country. That is not good for our national security, for public health and safety. And, it certainly does not promote a functioning legal immigration system.

So, the purpose of this hearing, I think, is laid out just in the title: Deferred Action on Immigration: Implications and Unanswered Questions. What I would really like to explore is, obviously, President Obama has now a couple of times through executive ac-

¹ The prepared statement of Senator Johnson appears in the Appendix on page 43.

tion, through memorandums published, deferred action first on childhood arrivals, and now he is deferring action on parents of American citizens and other legal permanent residents.

The question I have, and I think it is a legitimate question, is are those executive actions, are those going to help the problem or is it going to exacerbate the problem? Is it going to make it worse? And, I think that is a legitimate question to ask. I think we have some history which we will be exploring.

Our witnesses, and I will introduce you before you testify, but we have the Chief Actuary of Social Security to talk about the effects on our Social Security system. We have an expert on tax compliance and tax fraud, which I think will be interesting to hear the effects of the executive actions in that situation. We have a former deputy ombudsman for the U.S. Citizenship and Immigration Services (USCIS) to find out, is that agency going to be able to cope with the increased number of applications and people seeking this legal status. We have an official with the National Border Patrol Council, basically the union of Border Patrol Agents. And, we have a former General Counsel of the Department of Homeland Security's (DHS) predecessor organization, the Immigration and Naturalization Service (INS) agency. Again, I think there is going to be some very thoughtful testimony. I am looking forward to it.

Here is my main concern. If we can put up a chart ¹ that we have prepared here, we have seen the results of deferred action in the past, and I think it is relatively stark. We had unaccompanied children coming across the border historically, but the numbers were actually declining until basically 2012, when President Obama issued the first series, or members of his Administration issued memos on deferred action on childhood arrivals. I think just pictorially, graphically, it is pretty stark what the result was. We had a flooding of unaccompanied children to our border, creating that humanitarian crisis.

And, even though those memoranda did not apply to people coming into this country at that time, that did not make any difference. If you take a look at the bottom line there that is in yellow, that is showing the percentage of those unaccompanied children that were actually removed from this country, actually sent back to their countries of origin. You can see how that has declined from 21.4 and 21.7 percent in 2009 and 2010 to only 2.2 percent in the last year, 2014.

So, I think this is certainly evidence, and it is my concern that President Obama's deferred action now in this latest round of memoranda could create that same dynamic, actually increase the incentives for illegal immigration—no matter what the memoranda say, actually create the incentives for more people to come into this country illegally, increasing the pressure on the border. And, again, I think that is a legitimate question to ask.

Now, I would like to conclude my comments by acknowledging the fact that we are a nation of immigrants. We always have been. It has made our Nation strong and vibrant. The vast majority of people coming into this country as immigrants, whether legally or illegally, are doing it for the same reason that our ancestors came

¹ The chart referenced by Senator Johnson appears in the Appendix on page 104.

here. They are seeking the opportunity, the hope, the promise of this great Nation. So, I understand that and we need to value their contributions.

But, we have to recognize there are literally hundreds of millions of people that would like to become American citizens, who would like to come to this country. We have to make that a legal process. We have to control that. We have to make sure that what immigration we do allow in this country is done for the benefit of all Americans, and so it has to be a legal system.

So, again, I am looking forward to the testimony. I am looking forward to a very thoughtful discussion.

Chairman JOHNSON. And with that, I would like to turn it over to our Ranking Member, Senator Carper, for his opening comments.

OPENING STATEMENT OF SENATOR CARPER¹

Senator CARPER. Thanks very much, Mr. Chairman.

To our witnesses, welcome and thank you for joining us today.

We are here today to learn more about the implementation of the President's executive actions on immigration. I think it is fair and reasonable oversight for this Committee to take and I am glad that we are here and I am glad that you are here. As with any new government initiative, there are likely to be a variety of bureaucratic challenges that need to be addressed, and we will talk about those today. So, I look forward to hearing from all of our witnesses about the challenges that might lie ahead, as well as some possible solutions to those challenges.

Last Congress, this Committee—and the entire Senate—spent a great deal of time examining our Nation's broken immigration system. And after months of debate, two-thirds of the U.S. Senate, including Democrats and Republicans, came together to pass a comprehensive immigration reform bill. The bill was not perfect. There are plenty of ways to improve it, and my hope is that we will.

But, it did address a number of issues that have plagued our immigration system for years. Perhaps just as important, it would have also reduced our budget deficits by—listen to this—nearly \$200 billion over the next 10 years, and by another \$700 billion in the 10-years after that. Moreover, it would have grown our Gross Domestic Product (GDP) by 5 percent over the next 20 years.

As we know, unfortunately, the House did not act on that legislation, and as a result, we continue to be left with a broken immigration system that meets neither our economic nor our security needs as a Nation. Faced with paralysis here in Congress and continued inefficiency and unfairness in our immigration system, whether you like it or not, the President has decided to try and make several temporary improvements, hoping it would spur those of us in Congress to finish the job that we began almost 2 years ago. Those improvements or changes were not meant to be permanent, but they are what brings us to this debate today.

Look, I know many of our colleagues, some on this Committee and some not on this Committee, have strong misgivings about the President acting on his own on these matters. Nonetheless, I hope

¹The prepared statement of Senator Carper appears in the Appendix on page 45.

we can set aside any frustrations over tactics and look at the substance of what the Administration is trying to do. If we can find a way to do that, I think we just might find room for common ground at the end of the day. After all, that is what the American people sent us here to do.

There are more than 11 million people living in this country without documentation. We would not be able to remove all of them even if we wanted to try, and we should not try. Some of these individuals are young adults, brought here as children with no choice of their own in that matter. They are Americans in every way except on paper. Others are productive and law abiding parents of U.S. citizens or legal residents who have lived here in some cases for decades. Allowing these folks who live in our communities to work legally and pay full taxes will be good for both our economy and for our Federal budget.

In fact, the Council on Economic Advisors has estimated that these new Administration initiatives, along with other immigration policies announced in November, would increase our Nation's Gross Domestic Product by \$90 billion over the next 10 years. These changes will also lead to a decrease in Federal deficits by somewhere between \$25 and \$60 billion over the next 10 years, as well.

Blocking or repealing the Administration's initiatives would take us backward. In fact, just last week, the Congressional Budget Office (CBO) reported that the House bill to block these deferred deportation programs that the Senate declined to take up and consider yesterday would cost our economy \$7.5 billion over 10 years.

Estimates indicate that more than 4 million immigrants will be eligible for the temporary deportation relief outlined by the President. And, while not all those eligible are expected to apply, many will, and that will allow the Administration to focus its limited enforcement resources on the highest priorities for removal, those who pose security risks to our country or recent arrivals without longstanding ties to our Nation. That is more than enough work for our border security and immigration enforcement officials to handle, even at the record deportation levels that we have seen in recent years.

So, in sum, based on what we know so far, I have come to the conclusion that the initiatives whose implementation we are examining today are feasible, are fair, make good economic sense, and actually enhance our Nation's security. And, whether we agree with that or not, these initiatives are interim steps. Let me just say, these should not be the final steps. Those are the ones that we need to take by doing the hard work of rebuilding the consensus that allowed two-thirds of the Senate just 2 years ago to support compromise immigration reform legislation.

And, so as I close, I want to thank the Chairman for calling this hearing together. While there is some disagreement about what the President has done, I hope we can all agree that this hearing is the proper forum to have the debate on immigration policy.

I do not believe that we should be threatening to shut down the Department of Homeland Security, an agency vital to our Nation's security, over disagreements with the President's policies. All three former Homeland Security Secretaries, two of them Republicans, one of them a Democrat, agree with me on that point.

In the next several days, I hope that most of us can come together to do what I believe is the right thing, and that is support the passage of a clean 4-year appropriations bill for the Department of Homeland Security by February 27, and then we have to work to pass a thoughtful, comprehensive immigration reform bill that is worthy of this body into which all of us are privileged to serve.

Let me just say, if I could, last night I got home and I had a late dinner with my wife and she was troubled and I said, "What is bothering you?" And, she said, "The Jordanian pilot that was burned to death in a cage today, that is what is bothering me." And, my friends, we live in a world that is scary. It is scary.

And, it is not just people being burned to death in a cage by the Islamic State of Iraq and Syria (ISIS), or ISIS beheading people. It is not just them doing mass murders or enslaving women into servitude to them. It is not just that. It is not just lone wolves in Detroit trying to gather the munitions and the equipment to enable them to come down here and attack this place where we work. It is not just Ebola. It is not just people trying to get drugs into this country illegally or trafficking human beings. All that is going on. It is not just about trying to make sure our airplanes are safe and our airports and our ports are secure, that we are able to move products through our borders.

All that stuff is being done this day in large part because of the work of the Department of Homeland Security. And, for anybody to be thinking that it might make some sense to let that Department go out of business, to put them on the sidelines at this time in this age in which we live, have we lost our minds? I hope not. Thank you.

Chairman JOHNSON. Thank you, Senator Carper.

I think Mrs. Carper, by the way, is voicing the concerns of most Americans. We all share the same goal. We want a prosperous country. We want a safe and secure Nation, which is why the mission of this Committee is to enhance the economic and national security of America. And, so, again, I appreciate your comments. I do not believe there is anybody serving in the U.S. Congress that does not want to keep this Nation safe and secure.

We want to make sure that the Department is going to be funded. It is one of the reasons that a number of our leaders, including myself, did ask President Obama not to initiate this executive action, which so many of us do disagree with. That is what has created this issue. Without those actions, DHS would have been funded through the end of the fiscal year (FY) and we would be talking about funding for the next fiscal year.

It is unfortunate we are going to have to grapple with this and I think the best way to do it is what we are doing here today, is to let us have an honest discussion and let us talk about what the intended and unintended consequences of that action would be.

It is the tradition of this Committee to swear in witnesses, so if you could all rise. Raise your right hand.

Do you swear the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. GOSS. I do.

Ms. O'CONNOR. I do.

Mr. BELLOCCHI. I do.

Mr. MORAN. I do.

Mr. COOPER. I do.

Chairman JOHNSON. Thank you. The witnesses are sworn in.

We will begin testimony with Mr. Stephen Goss. He has been the Chief Actuary for the Social Security Administration (SSA) since 2001 and has worked in the Office of the Chief Actuary for over 40 years. Mr. Goss.

**TESTIMONY OF STEPHEN C. GOSS,¹ CHIEF ACTUARY, U.S.
SOCIAL SECURITY ADMINISTRATION**

Mr. GOSS. Chairman Johnson, Ranking Member Carper, and Members of the Committee, thank you very much for the opportunity to come and talk to you today. Immigration, as both Chairman Johnson and Senator Carper have mentioned, is an incredibly important part of the evolution of the population of the United States.

We are here to talk today and for me to share with you some estimates that we have developed in my office about the implications of the recent executive actions put forth by the President on November 20 of last year. It includes, if I may give the short form, the Deferred Action for Childhood Arrivals (DACA) extension and the Deferred Action for Parents of Americans (DAPA) program, along with several other provisions. It is not just those two that are included in these executive actions.

These proposals, these actions that have been put forth, will have significant implications for the population, the economy, and also Social Security finances. They will also have significant implications beyond even just Social Security and Medicare.

Let me just share with you that net immigration into the United States adds about one million extra people into our population every year. Now, compare that with four million births that we have in our shores every year. That is a substantial component of the growth of our population that not only causes our population to grow faster than it would otherwise, but it also changes the age distribution, which is a long topic, but it is incredibly critical to the financing of Social Security, Medicare, and all retirement plans in this country. With the drop in birth rates that we had back in 1965, if we did not have the kind of net immigration that we have now with young people coming in about a million every year, we would have much more severe challenges for Social Security, Medicare, and all of our retirement plans in the country.

Now, let me just address a little bit the financial implications for the national economy of the executive actions as we have estimated them, and many assumptions need to be made, as you know. We have made those assumptions.

We assume that individuals, first of all, who come to the United States without documentation or who have overstayed visas and are not currently legally documented status will be working in our economy at about the same rate as other people at the same age and sex. Per Senator Johnson's comments, people come here be-

¹ The prepared statement of Mr. Goss appears in the Appendix on page 47.

cause it is a land of economic opportunity. That is why people come here, by and large, so we assume the rate of people being employed and working in the economy is about the same. Thus, extra employment from extra immigration by whatever means does generate extra gross domestic product (GDP), as noted from some other sources.

By 2024, we estimate that as a result of these executive actions the increase in our overall population of the United States will be about 359,000 individuals, about 248,000 of which will be additional employed individuals in our economy, and this will cause the Gross Domestic Product in 2024 to be about 0.15 percent more than it would otherwise be. It is not a lot, but these are small actions relative, especially, to S. 744 passed by the Senate just a year ago.

By 2050, we project that the added population as it ages from especially the DAPA/DACA groups, will be about 922,000 increase in the population about 408,000 of whom will be workers, and that will cause GDP at that time, in 2050, to be about 0.22 percent higher than it would otherwise be.

Now, implications for Social Security, sort of our bailiwick. The net annual cash-flow, that is tax income coming into Social Security less the cost that we pay out from Social Security for all purposes, for the combined Social Security, Old-Age and Survivors Insurance (OASI), and Disability Insurance (DI) Trust Funds will be increased for 2015 through 2045 when the individuals granted legal work status under these provisions will still be at younger working ages. However, for 2046 through 2082, as these same groups will be aging, they will be moving from working ages into benefit ages, and assuming that they stay around with us, that they have worked, that they have gotten earnings credits and get benefits later, then we will have the reverse and the cash-flow for Social Security will go negative for that period of time.

As it happens, for the estimates that we worked out for the totality of all the provisions in these executive actions, we have a small long-range positive, but it is very small. It is 0.01 percent of payroll, and that is relative, by the way, to a 2.88 percent of payroll shortfall for Social Security as a whole over the next 75 years. So, it is a small positive, not a big thing, but it is essentially neutral.

Now, we project by 2024 that we will have 925 thousand additional workers paying taxes into the Social Security system. This increase comes from increases in workers in the national economy mentioned above, but in addition, it comes from people who are now in the informal economy, sometimes called the underground economy, who will be moved into the formal economy and will begin paying taxes, by our estimates. The added workers paying taxes is fairly stable, at about a million for years 2024 through 2050.

Now, let me just address very briefly the totality of components of the executive actions, just to make sure that we have them all on the table. There are two components that principally address—well, they really address legal permanent residents. One is the entrepreneurs, about 10,000 per year additional entering the country. That will create a significant increase over time in our population of people who are legal permanent residents, working and contributing. Also, from all the provisions, the net effect we estimate will

be an increase in the population at childbearing ages, and, therefore, there will be additional children born on our soil who, of course, will be natural born citizens. Those are the components that are on the legal permanent resident side.

There are several components, that operate on the undocumented side, and I see we are getting really low on time here, so I will be very brief on this. Of course, the first thing that we point to is the increased border security, and the second item is emphasis on enforcement for people within our borders to go after people mainly who are security risks. We see those as having some offsetting effects. As for the exact magnitudes, we have made estimates. It is not clear, but we think that those will be probably largely offsetting.

Of course, there is the expansion of the DACA and the introduction of the DAPA. We estimate that those will result in substantial numbers of people filing for and receiving authorization. But, the key point about those groups is that they are groups that are, particularly for the DACA, still generally very young. For the DAPAs, they are still sort of relatively low ages, so they are what we would refer to as a closed group of people. It is a temporary action. Those people would get work status. We assume they will be re-upped if they do not do bad things along the way, and that they will continue to work in our economy and eventually get the ability to get benefits.

And, with that said, I guess I should conclude and just say, again, thank you very much for the opportunity and I look forward to hearing all the other testimonies and any questions you might have. Thank you.

Chairman JOHNSON. Thank you, Mr. Goss.

Our next witness is Eileen O'Connor. She is a partner at Pillsbury Winthrop Shaw Pittman LLP, where she practices tax law. Ms. O'Connor has served as Assistant Attorney General of the Tax Division at the Department of Justice (DOJ), on the President's Corporate Tax Fraud Force, and previously worked at the Internal Revenue Service (IRS). Ms. O'Connor.

**TESTIMONY OF THE HONORABLE EILEEN J. O'CONNOR,¹
PARTNER, PILLSBURY WINTHROP SHAW PITTMAN LLP**

Ms. O'CONNOR. Thank you, Chairman, Ranking Member, Members of the Committee. Thank you for inviting me to speak with you today, and for those of you who are new to the Senate and Washington, welcome. Glad to have you here.

I am speaking today on my own behalf, not on behalf of my partners, my firm, or my firm's clients. I am speaking to you on the basis of my experience with tax enforcement.

There are a couple of concepts that we need to keep in mind when we are talking about the effects of the deferred actions. One is the Individual Tax Identification Number (ITIN). My colleague to the right just mentioned that some people who were subject to the deferred action might be moving from the informal to the formal economy and, therefore, start paying taxes. A great number of people who are in the country illegally are already paying taxes, so

¹ The prepared statement of Ms. O'Connor appears in the Appendix on page 61.

I think that when we look at the numbers that were offered for that movement, we need to keep that in mind.

The Individual Tax Identification Number, was developed because the Internal Revenue Code applies to all U.S.-source income and all U.S. persons. Not everyone who has U.S.-source income is a U.S. person and, therefore, qualified for a Social Security number (SSN). So, Individual Tax Identification Numbers were established to permit the Internal Revenue Service to track the returns and the tax payments of people who are not U.S. persons but have U.S. tax liabilities.

In 1996, the Internal Revenue Service started issuing ITINs to illegal aliens. In 1999, the Treasury Inspector General for Tax Administration reported to Congress and to the Internal Revenue Service that this created a direct contradiction with the obligation of the government to enforce the immigration laws and asked Congress or the IRS to do something about that. That has yet to happen.

The Treasury Inspector General also reported to Senator Roth that illegal aliens were being given the Earned Income Tax Credit (EITC). Senator Roth then saw to it that legislation was enacted making it clear that in order to receive the Earned Income Tax Credit, you have to have a Social Security number, meaning you are a U.S. person authorized to work in the United States.

I need to talk just a second about the Earned Income Tax Credit. It is a refundable credit. There is more than one refundable credit. There is the Earned Income Tax Credit and the Additional Child Tax Credit. A refundable credit is not a refund and not really a credit. It is a credit that exceeds the amount of tax somebody has paid in. My colleague to the right has mentioned the increase in Social Security taxes that will be collected. Social Security taxes are collected from people who are earning wages, but then they are given back in the form of the Earned Income Tax Credit. So, a refundable tax credit will reduce tax liability below zero and result in checks being paid to the person who claims the credit.

The Earned Income Tax Credit is not available for people who do not have Social Security numbers, but the law on the Additional Child Tax Credit, also a refundable credit, is not that clear. Some people think it is clear, and unless you have a Social Security number, you are not eligible for the credit. Other people—most importantly the Internal Revenue Service—believe that it is very clear that a Social Security number is not required. So, the Internal Revenue Service makes no effort to determine the alien or legal status of people who are claiming the Additional Child Tax Credit.

The Treasury Inspector General for Tax Administration (TIGTA) issues report after report, year after year, about the Internal Revenue Service's handling of ITIN-filed returns and refundable credits, and reports such horrifying statistics as, in one year, the Internal Revenue Service sent 24,000 checks to a single address "refunding" tens of millions of dollars in tax that probably had not been paid to begin with, and this is where some of my experience at the Justice Department comes in.

There are many tax scams. These refundable credits and ITINs create an attractive nuisance. Just like securities criminals have pump-and-dump schemes, there are ITIN refund mills, and the

Treasury Inspector General for Tax Administration estimates that over a 10-year period, \$122 billion in taxpayer dollars was sent to said criminals.

Now, this is not to say that everyone who files an ITIN return is a criminal, but it is a fact that we have refundable credits in the Internal Revenue Code that are paid to anybody who asks for them—and ITINs are available very easily. The Government Accountability Office (GAO) reported to the Internal Revenue Service years ago that ITINs were easily obtained on bogus documents, and once obtained, they were also used for other purposes.

Many States permit the use of an ITIN, although it requires no proof of identity—permit the use of an ITIN as documentation supporting a driver's license or property ownership or other things, purposes for which the ITIN was never intended. It was intended only to permit the Internal Revenue Service to track payments and to track returns.

So, my time is running out, but I have many more horrifying statistics in my written testimony. I hope that you will refer to it. It includes largely summaries of many of the Treasury Inspector General for Tax Administration's reports over the years, which, in turn, contain many more statistics. I have just summarized them ever so briefly in my testimony.

We know from experience that the actions upon which the Administration has embarked are guaranteed to inflict substantial damage on tax administration and enforcement and to drain even more billions of dollars from the Treasury, even more than the past follies are already costing and continue to cost us.

I look forward to answering your questions. Thank you very much.

Chairman JOHNSON. Thank you, Ms. O'Connor.

Our next witness is Luke Bellocchi. He is of Counsel at Wasserman, Mancini and Chang, and former Deputy Ombudsman for U.S. Citizenship and Immigration Services at the Department of Homeland Security and Assistant Commissioner of the Customs and Border Protection (CBP). Mr. Bellocchi.

**TESTIMONY OF LUKE P. BELLOCCHI,¹ OF COUNSEL,
WASSERMAN, MANCINI AND CHANG, AND FORMER DEPUTY
OMBUDSMAN FOR CITIZENSHIP AND IMMIGRATION SERV-
ICES AT THE U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. BELLOCCHI. Mr. Chairman, Ranking Member, Members of the Committee, thank you for the honor of allowing me to testify today before this Committee, for which I was once a staff member.

The President's new initiative to stay deportation for an estimated 4 to 5 million undocumented immigrants will create incredible pressure on U.S. Citizenship and Immigration Services to handle millions of new applications. This will be the largest wave of applications USCIS has ever seen.

USCIS is still primarily a paper-based, mail-based application adjudicatory body. USCIS has 13,000 employees, or 13,000 officers, and 5,000 contractors to handle about six million applications per year. USCIS plans to hire about a thousand new employees to han-

¹ The prepared statement of Mr. Bellocchi appears in the Appendix on page 68.

dle DAPA. It is hard to imagine how they are going to be able to get those 1,000 people on-board, go through security clearance, and be trained to handle that many applications.

More likely, USCIS will divert resources from processing other applications to handle DAPA applications. This is, in fact, what they did with DACA applications, and that has created some backlogs in other types of applications; for example, I-130 family Green Card applications, and Employment Authorization Document Cards (EADs). An EAD is very important to an immigrant who is working. If the EAD expires, usually in 1 or 2 years, they cannot continue to work, and this puts their employer and employees in a lurch.

But, in fact, that is what is happening in good numbers. In fact, it is happening to DACA applicants who applied 1 or 2 years ago and their EADs are expiring now. By one estimate, 25 percent of EADs for DACA applicants are not being renewed in time for them to continue work. This is the problem with trying to push through so many applications all at once without having the proper resources.

This reminds me of a program that was handled by INS in the mid-1990s called Citizenship USA, in which one million people were naturalized. The INS hired a lot of people very quickly, in some cases only gave them about 40 hours of training, and of course, mistakes were made. In fact, in that case, more than 60,000 people were naturalized without any kind of background check and over 10,000 felons were actually naturalized. The Department of Justice had to go back and denaturalize a lot of them.

You would think USCIS would try and avoid this problem again, but we are seeing evidence from e-mails that have been released by management that managers are telling their front-line people to use streamlined, light background checks, abbreviated Treasury Enforcement Communications System (TECS) checks, and to accept pretty much any kind of documentation of their identity when they go for biometric checks. This is a population that we have to be very careful about. Unlike visa applicants who came through the border and were checked at one time, if they entered without inspection at all, crossed the border at some point, they may have never gone through any kind of check.

Now, the fingerprint checks are going to be run through the Federal Bureau of Investigations (FBI), and, of course, if they were ever arrested or convicted in this country, they are going to show up with that identity. But, if they ever committed a crime in a foreign country, we are not sure that they would be flagged.

Further, there is some evidence that the background checks are not being checked against the entire counterterrorism database, as evidenced by the Boston Marathon bomber who was naturalized 7 months before he perpetrated his crime. He was on, actually, the expanded Counterterrorism Watch List, as well.

As far as anti-fraud goes, the Fraud Detection and National Security Directorate (FDNS), which is the USCIS anti-fraud office, I have been told, has been taken out of document review for DACA cases. And, the evidentiary standard for getting through DACA is actually quite low, as I alluded to earlier, in terms of identity and so forth.

With DAPA applicants, they will be dealing with family relationships. I understand that mostly assertions and documents will be used to confirm family relationships and Deoxyribonucleic acid (DNA) testing will not be used.

In summary, I will just say that USCIS officers are very hard working, patriotic people, but they are a service oriented agency and they will try and get through all these applications in the time frame given to them. But, in doing so, if they are not realistic and honest about the resources they will need and the time it will take to process these applications properly, they are going to run into problems and I urge them to take that into consideration. Thank you.

Chairman JOHNSON. Thank you, Mr. Bellocchi.

Our next witness is Shawn Moran. He is Vice President of the National Border Patrol Council and has over 17 years of experience as a Border Patrol Agent. Mr. Moran.

TESTIMONY OF SHAWN MORAN,¹ VICE PRESIDENT, NATIONAL BORDER PATROL COUNCIL

Mr. MORAN. Chairman Johnson, Ranking Member Carper, Members of the Committee, on behalf of the 16,500 Border Patrol Agents who I represent, I want to thank you for having this hearing today.

My name is Shawn Moran. I am the Vice President and National Spokesperson of the National Border Patrol Council. I am a 17-year veteran of the U.S. Border Patrol and have spent the majority of my career in the Imperial Beach and El Cajon Border Patrol Stations in California. I have also been temporarily assigned to several sectors and stations along the Southwest Border during that time.

Before I discuss how I believe the President's decision will impact border security, I want to be clear that I am not a lawyer and I am not here to comment on the legality of the President's actions. I am here as a Federal law enforcement agent to discuss how the amnesty provided in November will impact border security. Unfortunately, I do not believe that border security implications were fully considered prior to the issuance of the Executive Order (EO) and that concrete actions need to be taken by Congress and the Administration this year to bolster border security.

Albert Einstein's definition of insanity is doing the same thing over and over again, expecting a different result. If you look at the history of our response to illegal immigration, we certainly meet that definition.

In 1986, Congress passed and President Reagan signed the Immigration Reform and Control Act (IRCA). The legislation was supposed to solve the illegal immigration problem in this country and in the process legalized illegal aliens who had been in the country prior to 1982. What was the result? Illegal immigration exploded in this country. The Pew Research Center estimates that the population of illegal aliens in this country in 1990 immediately following the passage of IRCA was 3.5 million. By 2007, that population had swelled to 12.2 million. Cities like San Diego, where I live, and El Paso were nearly overrun.

¹ The prepared statement of Mr. Moran appears in the Appendix on page 80.

In my career, I have arrested and interviewed thousands of illegal aliens. In deciding whether or not to attempt to enter this country illegally, these individuals weigh the risks and potential rewards. These individuals are risking not only a lifetime of savings to pay the smugglers, but literally their own lives in the process. They know the border is a dangerous place. They know that they are opening themselves up to predation from smugglers in addition to the physical hazards of crossing the Rio Grande River, the Arizona desert, or even the wilderness of Montana.

Unfortunately, since the passage of IRCA, there is a perception among illegal aliens that if you can get over the border and can hide in the shadows long enough, eventually, there will be a pathway to legal status. This pathway may be by virtue of the duration you have been in this country or through your children. We need to only look to the debacle last summer with unaccompanied minors to see how prevalent this perception is among potential illegal aliens.

Last year, the Administration took great pains to point out that their most recent expansion of deferred action for childhood arrivals, was a continuation of deferred actions that had been taken by previous Administrations. We were all told that there was precedent for their actions, and the Administration was completely correct. There were ample amounts of precedent, and therein lies the problem. We will never be able to stop illegal immigration until potential illegal aliens believe that it is a losing proposition. They need to know that they will be found and that hiding in the shadows will do them no good. Employers need to know that if they hire illegal aliens, there will be credible sanctions.

The question then becomes what steps this Committee, within your jurisdiction, can take to strengthen border security before the next wave of illegal immigration occurs. Several suggestions that I have include increased manpower. Currently, there are 21,370 Border Patrol Agents in this country. Under sequestration, we effectively lost 1,500 full-time equivalents that have, thankfully, been restored under the Border Patrol Pay Reform Act introduced by Senators Tester and McCain.

We do not have to double the size of the Border Patrol to gain operational control of the border, but we are, in my opinion, approximately 5,000 agents short of where we should be. The National Border Patrol Council would advocate that of this number, 1,500 be sent to the Northern Border, which is woefully understaffed, and the remaining 3,500 positions be allocated to interior enforcement, which is virtually nonexistent.

Supervising staffing levels—the Border Patrol is an extremely top-heavy organization with far too many layers of management and a convoluted chain of command. Although Congress has provided the funding to double the size of the Border Patrol, we have not doubled the number of agents at the border. Let me explain that.

The average large police department has one supervisor for every 10 officers. The Border Patrol has one supervisor for every four agents. The Committee should mandate a 10-to-1 ratio and achieve it through attrition in the supervisory ranks. The second problem is that we have agents doing duties like processing and transpor-

tation that could be handled more cost effectively by non-law enforcement personnel.

Every night, we effectively play goal line defense because all of our resources and assets are concentrated right at the border instead of having a defense in depth. Let me give you an example. In Arizona, we have 7,000 agents, and of all those agents, we have—I am sorry. Do you know how many agents we have assigned to Phoenix, which is an important transit point for traffickers? The answer is zero. The Border Patrol's northernmost station in Arizona is Casa Grande, which is 50 miles south of Phoenix.

We also advocate for better training. During the buildup of the Border Patrol during the Bush Administration, the Border Patrol Academy's duration was reduced from approximately 20 weeks to as little as 54 days if you spoke Spanish. This is simply not enough time to properly train an agent and weed out those who are not up to the challenge. The Committee should require that the Academy revert back to 20 weeks.

Again, I want to thank the Committee for the opportunity to testify today, and if you have any questions, I would be happy to answer them to the best of my ability. Thank you.

Chairman JOHNSON. Thank you, Mr. Moran.

Our next witness is Bo Cooper. He is a partner at Fragomen, Del Rey, Bernsen and Loewy LLP and former General Counsel at the Immigration and Naturalization Service from 1999 to 2003. Mr. Cooper.

TESTIMONY OF BO COOPER,¹ PARTNER, FRAGOMEN, DEL REY, BERNSEN AND LOEWY LLP, AND FORMER GENERAL COUNSEL AT THE IMMIGRATION AND NATURALIZATION SERVICE

Mr. COOPER. Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee, I appreciate very much the opportunity to join you today for this important discussion.

The perspectives I will offer are based on decades of involvement with the U.S. immigration system, about half in the government and about half in private practice and teaching. When I was General Counsel of the INS, I served Administrations of both parties and was a career public servant.

Every new government initiative, especially one of this scale, needs to be examined for cost, achievability, risk, and benefits, and the Committee is right to be doing so here, and I acknowledge and respect the view you expressed, Chairman Johnson, that you disfavor the decision of the President to initiate these programs. But, I also appreciate very much the spirit of open discussion that you have established and I would like to try to offer some suggestions for why I believe that DAPA and DACA are sensible policy initiatives that can be carried out effectively by DHS and that deserve the support of the Congress and the American public.

First, DACA and DAPA will help the U.S. economy. As you noted, Ranking Member Carper, the Council of Economic Advisors has concluded that DACA and DAPA will increase Gross Domestic Product by \$90 billion over the next decade. They also estimate that the programs will help and not harm American workers by

¹ The prepared statement of Mr. Cooper appears in the Appendix on page 91.

growing wage levels overall, modestly, but growing. At the same time, we have heard from Mr. Goss that the addition of new taxpayers should positively affect the Social Security safety net.

In addition, the programs are designed not to cost the taxpayer anything in implementation because they will be funded by the user fees that support U.S. Citizenship and Immigration Services. And, then, just last week, CBO concluded that if DACA and DAPA are eliminated by legislation, that decision would increase the Federal deficit by \$7.5 billion over the next decade. DACA and DAPA are smart economically.

Second, DACA and DAPA are smart public safety policy. Law enforcement currently has too little idea who the undocumented immigrants in our country are, where they work, and where they live. DACA and DAPA will help to change this, not completely, but they will significantly help to change this. Millions of people who are now in the shadows will come forward and provide biographical information, including biometrics, to the Federal Government.

On this point, we can take it from the public safety experts. In the lawsuit that has been filed and heard in Brownsville, Texas, in the District Court to challenge DACA and DAPA, a brief was filed by the Major City Chiefs Association. This organization represents chiefs and sheriffs that serve nearly 70 million people in this country. In that brief, those law enforcement officials explained the significant advantages that DACA and DAPA will bring to them and their work.

First of all, the programs will firmly establish identity for a far greater number of people. Better identification means better coordination of law enforcement data, including prior crimes and arrests. Also, when police officers encounter people who lack identification, typically, they have to then arrest the person and bring them in for further processing. Where that person has proper identification, that issue comes off the table and the officers then can make better decisions about how to prioritize their resources and where to focus.

In addition, DACA and DAPA will make undocumented victims and witnesses more likely to come forward to speak to police trying to prevent and investigate crimes, and more information means better law enforcement.

Third, DAPA and DACA are smart immigration policy. With resources to remove only about 400,000 people each year out of the estimated 11 million people who are subject to removal, DHS necessarily must exercise prosecutorial discretion and establish enforcement priorities. They have made the decision to place maximum focus on those who present security threats, on criminals, and those with the most recent border violations and removal orders. It is equally sensible to formally identify those people who are not enforcement priorities and to provide them with temporary authorization to be present and to work.

With DAPA, that decision is being made with respect to people who have lived in this country for at least a half a decade, who do not pose criminal and security threats, and who have children who are U.S. citizens or lawful permanent residents. That is a strong set of ties. It strikes me as sound immigration enforcement policy for DHS to conclude that with 11 million people to choose from as

enforcement targets and the resources to remove about 400,000 of those people per year, this is a group whose presence we can reasonably allow.

Fourth, I believe DHS can carry this out. There is no doubt that these programs are going to pose an operational challenge, but DHS is working from a position of several advantages.

First, they have a model in the DACA program. They put it in place pretty quickly, pretty efficiently, and they have been through the caseload in an efficient way. There is no question that this is a larger program and, therefore, will have much larger challenges, but that is the beauty of a fee-funded agency. With more applications come more resources to deal with those applications.

Third, there is every reason, I believe, that DHS has the technological and other capacity to manage carefully the very important anti-fraud and security concerns that are going to come with a program like this. Since September 11, 2001, there has been an explosion in the contents and the interoperability of Federal, State, and even international law enforcement databases and in the sophistication of the agency and its ability to deal with those.

I understand that DHS plans to run DAPA applicants very thoroughly through their fingerprinting and background checks across several Federal databases and will be able to use this information to more effectively identify and track the people in this country. I think that will make this country safer in the long run.

I would be very happy to address any questions that the Committee has and I appreciate again the opportunity to join you today.

Chairman JOHNSON. Thank you, Mr. Cooper.

I will start off the round of 7 minutes of questioning.

Mr. Goss, I just want to make sure I understand the assumptions that you certainly made in your actuarial assessments here. You do assume that we have the border secure and that there is interior enforcement as we would have achieved under the Senate comprehensive immigration bill, correct?

Mr. GOSS. Well, to a degree. We have assumed, actually, about half as much effectiveness on the border security as we were for S. 744, only half. There are certain features that were built into S. 744 that we are not aware would be part of what is going on.

Chairman JOHNSON. But, you assumed greater border security than we have right now?

Mr. GOSS. Absolutely. Yes.

Chairman JOHNSON. OK. So, that is not the case, because we have not passed a border security bill, which, by the way, that is a top priority of this Committee, give the American people what they have been demanding, a border security and immigration enforcement bill. That would be handy.

Ms. O'Connor, another assumption—I want both of you to speak to this, supposedly, all these people that are currently here and living in the shadows are all in the underground economy, all of a sudden, they come into the formal economy and now they start paying taxes. I mean, is it not really the case that, and I do not know where we get the number on this, but how many do you think, what percentage actually are either paying taxes through ITINs or actually with false Social Security numbers?

Ms. O'CONNOR. I do not know the numbers and I do not know whether the IRS actually has the numbers, either, because it tells the Treasury Inspector General for Tax Administration that it does not identify the legal status of people who file returns using ITINs. There are a large number, however, of returns that are filed using false Social Security numbers. Sometimes those are used as a vehicle for theft from the Treasury generally. Sometimes they are used just because the person wants to get a job and use a Social Security number for that and files a return using it and it ends up not matching the Social Security Administration's records.

Chairman JOHNSON. I mean, do you think they are kind of overestimating the number of people that really are in this underground economy that are all of a sudden going to start paying taxes, that they probably already are paying taxes?

Ms. O'CONNOR. I am not an economist, so I do not have the ability to analyze that data, but that is certainly my impression. I am a big consumer of economic reports and that is certainly my impression. Millions of tax returns are filed every year using ITINs.

Chairman JOHNSON. OK. Thank you.

Mr. Bellocchi, I want to talk a little bit about potential document fraud. How prevalent is it? How easy is it? What kind of shortcuts are you concerned might be made because of this onslaught or this surge of applications that are going to have to be handled by USCIS?

Mr. BELLOCCHI. Well, it is going to be hard to tell how much fraud there is in DACA since I mentioned that, as I understand it, FDNS, USCIS, Anti-Fraud Office is not involved in document review for those cases at all. However, even if they were, the evidentiary standard for meeting DACA requirements is quite low, and I alluded to one—even the formal instructions on the application say, well, we need some proof of identity. You have a passport? Well, if you do not have a passport, how about a driver's license? If you do not have that, well, we will just take anything with a photo on it. And, as I alluded to before, there are e-mails from my management that say, do not turn anyone away from biometric checks because you do not have their identity, so—

Chairman JOHNSON. Do you believe that legal immigrants that are looking to apply for different benefits through USCIS, that their applications will be put to the back burner, that some of those folks will be harmed as USCIS redeploys assets trying to take care of the surge?

Mr. BELLOCCHI. Yes, indeed. In fact, I think they already have. As I mentioned, EADs are not being produced fast enough, before people's Employment Authorization expires, and that is just with DACA, which had about 700,000 applications over 2 years. DAPA applications start coming in—or, expanded DAPA will start coming in later this month, and by May, there may be millions of applications for DAPA, which will probably knock out a lot of the other kinds of immigration applications.

Chairman JOHNSON. And again, in your testimony, you said there are about 18,000 total employees now at USCIS handling about six million applications a year?

Mr. BELLOCCHI. That is correct.

Chairman JOHNSON. Now, we are going to add a thousand to process, nobody really knows, but probably millions, correct?

Mr. BELLOCCHI. Correct.

Chairman JOHNSON. Real quick, Mr. Goss, why would the administration be issuing permanent Social Security cards for a temporary deferred action program, and what are the implications of those permanent Social Security cards?

Mr. GOSS. I really could not speak to the motivation of the Administration on that, but our assumptions are that once people are granted this authority, as long as they are re-upped every 3 years and the executive actions stay in force, that they will be able to maintain the status, and with the SSNs that they have been provided, much as the SSNs provided to people who have temporary visas for work or education and get those re-upped or even overstay those visas, those SSNs stay with them.

Chairman JOHNSON. Ms. O'Connor, do you have an opinion on that in terms of why they would do that and what implication that might carry?

Ms. O'CONNOR. I find it completely perplexing. I have no explanation.

Chairman JOHNSON. OK. Mr. Moran, can you describe to me the base burden of proof Customs and Border Protection Agents have when they encounter an illegal immigrant—are there magic words that immigrants are basically trained to say to get a certain adjudication?

Mr. MORAN. I think illegal aliens that we encounter know our authority. They know the loopholes that they can exploit. And, just recently, the surge we saw in South Texas, we had people that we had apprehended that had scripts on them where they would recite it and say that they claimed credible fear—

Chairman JOHNSON. So, that is the magic word currently. You claim credible fear, and then what happens?

Mr. MORAN. Eventually, they will most likely be released. As your chart showed, we are removing approximately 2.5 percent of them. So, their end goal of what they wanted, which was to come to America, is now fulfilled at taxpayer expense.

Chairman JOHNSON. Have you been given training in terms of how you are going to handle illegal immigrants now with the DAPA?

Mr. MORAN. Yes, sir, we have. There is going to be an additional layer of checks. There is a checklist and we will now be screening people to see if they qualify for DACA or DAPA.

Chairman JOHNSON. Will the magic words now be, "I have been a permanent resident for more than 5 years," and then will that imply lack of action?

Mr. MORAN. I believe it will be—

Chairman JOHNSON. Will that tie your hands?

Mr. MORAN. I think the claims will be made. I do not know if Border Patrol Agents or CBP Officers will be the ones that are then adjudicating whether or not a document is authentic and whether they qualify under this program. That is a concern we have.

Chairman JOHNSON. What will you do as a Border Patrol Agent when an illegal immigrant says, "No, I have been here 6 or 7 years"? How will that affect your actions?

Mr. MORAN. Well, Senator, we have a checklist and it is pretty simple and it is a yes or no checklist. I am sorry. I have to find here—it says, has he or she resided continuously in the United States since January 1, 2010? If we check "yes," I do not know if that means they qualify. Personally, I do not feel it is my decision to make. I think somebody above my pay grade needs to make that decision.

Chairman JOHNSON. Will you just let them go?

Mr. MORAN. Personally, I would not. I would put that decision on one of my supervisors.

Chairman JOHNSON. OK. Thank you very much. Senator Carper.

Senator CARPER. Thanks, Mr. Chairman.

Again, our thanks to all of you for your willingness to stick around to answer our questions.

A long time ago, I was a Naval Flight Officer (NFO) and I served in the Navy for about 23 years, all in, and I remember being in Southeast Asia on one of our tours and to the office of my Commanding Officer and he had on the wall a cartoon that he had enlarged. It was a cartoon, and you may have seen this in your own lives, where a guy is on a desert island, or what looks like to be a desert island, by himself. There is one tree on the island. He is surrounded by alligators trying to get him and he is trying to climb up the tree to get away. And, the caption under the cartoon was, "It is hard to remember that our job was to drain the swamp when we are up to our eyeballs in alligators." Think about that.

I have had the privilege as Chairman of this Committee the last couple years to go down, not just to the border of Mexico—the Chairman and I, and I think Senator Sasse, are going to go down there very soon again—but, I have also had a chance to go to Mexico, to Guatemala, El Salvador, Honduras, to Colombia to try to understand why people would literally risk life and limb to try to travel 1,500 miles through Mexico for an uncertain future here. Why would people do that? And the reason why is because they are living in hell holes in many cases in Honduras, Guatemala, and El Salvador.

Let me just tell you one quick story. We have a number of Guatemalans who have come to the Delmarva Peninsula over the years to be part of the poultry industry, and when we had an influx of new young people into our country a year or so ago, a few more came into Southern Delaware from Guatemala and they were helped, in part, by Catholic Charities and by an outfit called La Esperanza, which means "hope." Among the young people I talked to, I talked to a guy who is 15 years old from Guatemala and his 13-year-old sister, and he ended up here, and here is how he ended up here.

He was asked by a gang in Guatemala in his community to join the gang and he said, "No, I am not interested." They asked him again a little while later and he said, "I am not interested." They asked him again and he said, "I am not interested." They said, "If you do not join, we are going to kill somebody in your family." He joined the gang. Part of his initiation requirement was to rape his

13-year-old sister. He told his parents. The two of them a week later were with a coyote on their way to our country.

Most of the people coming into the border these days are not coming from Mexico. There are as many people, almost, last year going from the United States into Mexico as coming from Mexico into the United States. The reason why so many people are coming from Guatemala, Honduras, and El Salvador to this country is because they lack hope, they lack opportunity, their businesses are shut down by extortion, gangs, and a lot of the crime that we inspire by virtue of our dependence on drugs. We are a big part of the cause of that. And, most of the people that are coming from those three countries who are coming to our border, they are not slipping through. They are basically turning themselves in and saying, "I want to have a safe place to live and to work."

We spent a quarter-of-a-trillion dollars in the last 10 years beefing up our border security. Is it more secure? You bet, it is. Is it perfect? No, it is not. Rather than continue to spend another quarter-of-a-trillion dollars over the next 10 years, we have only spent 1 percent, not even 1 percent of that to try to say, how do we help make the lives of the people in Guatemala, El Salvador, or Honduras durable, something that they can endure so they have some hope, rather than just feel they have to go to someplace else. Why can they not be comfortable and say, "I want to live here." "I want to raise my family here."

Fortunately, the presidents of those three countries have put together, something like Plan Colombia, and it is a good blueprint and it calls for addressing the root causes: lack of rule of law, the cost of energy, workforce, any number of things where they need to do a better job. And it is like in Home Depot. What do they say in Home Depot, "You can do it, we can help." Well, they can do it, but we need to help—not just us, Mexico, Colombia, Inter-American Development Banks, all kinds of people, nonprofits. We can all help.

And, if we spend the next 10 years saying, yes, well, you have to strengthen the borders more, we have to do more to strengthen the borders, and we do not address the underlying and root causes, we have wasted a lot of money and we will end up, as one of you said, I think, Shawn, I think it was maybe you who quoted Albert Einstein, keep doing the same thing over and over again and expect the same result. Well, that applies to this, as well. So, I would ask that we keep that in mind.

The other thing I want to do, in terms of a question, we talked about the economic impacts of the deportation programs, GDP growth, that sort of thing, the reductions in the cost of spending. I want to ask a couple of questions, one for you, Mr. Goss, and then maybe one for Mr. Cooper.

But, I think in your testimony, Mr. Goss, your testimony addresses some of these economic effects we mentioned earlier. You calculate that the program will boost GDP by, I think you said, \$43 billion for 2024 and more after that. What is driving that growth, please?

Mr. GOSS. Well, driving the growth in the Gross Domestic Product itself—and, an important distinction here. As the numbers are developed for estimated Gross Domestic Product by the Bureau of

Economic Analysis of the Department of Commerce, GDP is not dependent on people working in the above-ground economy. People who are undocumented and people who are working in the underground economy, whether they are documented or not, also contribute toward the estimated GDP.

So, we do estimate that the Gross Domestic Product as affected by our population as a whole, and as I mentioned, people even who are undocumented, we assume that they will, at any given age and sex, be as likely to be working and contributing toward the Gross Domestic Product. Our estimates of the implications of these executive actions as a whole would be that it will grow our population of working age to a greater extent, and there are especially some features here which we do not focus on that much, like the entrepreneurs that are expected to be about 10,000 per year additional coming in, which would significantly contribute toward the extra workforce and the extra people that are working and contributing toward our GDP.

Senator CARPER. Let me ask a follow-up to it. You studied the financial impacts on the Social Security system specifically. I think you told us you concluded that the deferred deportation programs would have a modest, but a net positive impact on the system. Just explain to us, why is that so?

Mr. GOSS. Well, the reason for it is because the large majority of the people who would be additionally coming in and being covered under Social Security would actually be newly paying taxes. We estimate that of the people who would be paying into the Social Security system in addition, that only about 15 percent initially of those who would be newly covered workers under these deferred actions and the other features would be people who were going to what we call our suspense file, that is people who had, in effect, maybe made up a nine-digit number and were paying taxes in already, that about 85 percent initially would be people who were working in the underground economy or would be new people coming to the country like the entrepreneurs and would be paying additional taxes.

By the time we get up to 2050, we estimate that the implications will be at more like 10 percent of the additional workers will be people who would be from where they would already have been paying taxes through some other means.

So, the bottom line is that the additional people coming at relatively young ages will, for two to three decades, be paying taxes into the system. That will be to the plus. I think the CBO estimates indicated the same in their 10-year projections. Following that, of course, there is the other side. As this group ages, they will have then earned the right to get benefits and we will pay out benefits that translate to be a very close call, and essentially a wash with a very small positive. It is basically neutral over the 75-year projection horizon.

Senator CARPER. OK. Thank you so much. Thanks, Mr. Chairman.

Chairman JOHNSON. Senator Baldwin.

OPENING STATEMENT OF SENATOR BALDWIN

Senator BALDWIN. Thank you, Mr. Chairman, Ranking Member Carper, and I want to thank the witnesses today for sharing your perspectives and expertise.

I believe that the deferred action programs that we are discussing today constitute an important step in trying to address our broken immigration system. It will give individuals, families, and employers greater certainty, ensure that more workers are paying taxes and paying into Medicare and Social Security, and allow individuals who contribute to our communities and our economy, in many cases, people who have been doing so for years, even decades, to come out of the shadows.

But, make no mistake, these programs, in my opinion, are, at best, a short-term step because Congress must act. We must act on a comprehensive, permanent reform to our immigration laws, and we have talked already about the fact that the Senate passed such a measure during the last Congress. And, while it was not perfect by any means, I voted for it because it is critical to our Nation and our economy that we fix the broken system.

It is because of that belief that I am frustrated by my colleagues who have chosen to play politics as we consider the Homeland Security Department's funding bill. It puts critical national security programs on the line in order to play out this attack on the President's actions on immigration. And, we are having this important hearing today in which we can learn more about making DACA and DAPA work best for our country and our economy while at the same time Republican leaders of this chamber are trying to undo these very programs on the Senate floor this week.

This is a very important conversation about the economic benefits of making our immigration system work and I am glad we are having it, and I hope that all of my colleagues will listen closely so that we can get back to working together to advance real and lasting reform that our economy and our communities desperately need.

I want to turn to the panel to help us further that discussion. I wanted to start with Mr. Cooper. In your testimony, you outline some of the estimates from the Council on Economic Advisors and the Congressional Budget Office on the fiscal impacts of these deferred action programs. We heard from Mr. Goss regarding the Social Security Administration's estimates on the impact on the Social Security Trust Fund. From your review of these and other assessments of the potential impact of these programs, have you found sources that indicate that they would have a negative impact on our economy?

Mr. COOPER. There certainly are economists who take varying positions on immigration in general. The sources that I have seen indicate a positive result.

Senator BALDWIN. Did not the Congressional Budget Office actually conclude that eliminating these programs would be a fiscal negative?

Mr. COOPER. Absolutely, a very large scale fiscal negative, to the tune of an increase in the Federal deficit by \$7.5 billion over the coming 10 years.

Senator BALDWIN. Mr. Cooper, you have seen the implementation of the original DACA program, which has been in place now for more than 2 years. The Department of Homeland Security has outlined the new resources and personnel that it will put in place to administer DACA and DAPA. I am wondering, in your opinion, do you believe that the Department of Homeland Security and the U.S. Citizenship and Immigration Services will be able to effectively administer these new programs?

Mr. COOPER. I do believe that. The immigration agencies are built to have a capacity to scale, because immigration flows and immigration policies evolve, and so that is a dynamic that the agencies have had to contend with always. And, as I mentioned before, it is a dynamic that they are especially well equipped to contend with because they get more resources as more applications come in. Resources are statutorily required to match adjudications demands.

In addition, there are technological sophistication and there are technological relationships, database, data sharing information, data sharing relationships with law enforcement elsewhere in the Federal Government and at the State level, it is far more sophisticated than it ever was. And, their anti-fraud abilities are far more sophisticated than they have ever been. I understand that FDNS is very much engaged in the planning of DACA expansion and DAPA implementation, that they have been involved in interactions with other governments to get document templates, with schools to get exemplars for enrollment materials and all similar kinds of documentation that would be analyzed to evaluate eligibility.

I think they will face some challenges, of course, but, yes, I think they are well equipped to implement these changes.

Senator BALDWIN. You just mentioned the ability to focus in on fraud, and by that, I interpret somebody trying to defraud the U.S. Government.

Mr. COOPER. Right.

Senator BALDWIN. One of the things I have heard from immigration groups is a concern for potential unscrupulous lawyers and notarios who take advantage of the people who are going through the application process. Can you tell me what your experience was in addressing that type of fraud at the INS and what advice you would have to help us prevent applicants for these programs from being taken advantage of?

Mr. COOPER. Yes. That is actually an issue that has, I think, a couple of related dimensions, one with respect to notarios, representatives here in the United States, and the other with respect to smugglers and the issue that Officer Moran and the Chairman were discussing, and they are very closely related.

With respect to fraud and unscrupulous representatives, that is an issue that the agencies have been focused on, including the Department of Justice. They bear a very strong role in trying to attack representative fraud for years, and it has gotten better and stronger. There are more significant requirements to qualify as a representative. There are increasingly strict representations that you have to make as a preparer of materials. And, there is increased law enforcement vigilance against notarios, and there is a very strong ability, as well, for the community to report informa-

tion about this kind of misuse. So, I believe that that is a very important problem to keep focused on, but one that the Departments of Justice and Homeland Security do have a strong focus on.

They also have a lot of anti-fraud measures in place along the lines that we discussed before, the standard of proof, someone who comes forward and requests deferred action has to demonstrate their eligibility and the standard of proof is, more likely than not, the same standard that would apply if any of us sued each other in the courts. And, there are criminal and other penalties in place for people who make misrepresentations to the government in order to gain advantages under the immigration statutes. So, the tools are there. Again, it is a large-scale program. It will pose challenges. But, the tools, I believe, are there.

If I could just mention briefly the related issue of abuse, not just by representatives but also by smugglers. I understand Officer Moran's front-line experience and I agree with the concern he expressed that there are people who are engaged in facilitating unlawful migration to this country that are very sophisticated in their ability to help people game the system. And, there is no question that there are smugglers who try to take advantage of that.

But to take, for example, the scenario that we were concerned with before, that someone appears at the border and says, "I have been here for 5 years." First of all, in my experience, Border Patrol members tend to have highly refined experience and instincts in these situations and would be able to see through false statements and examine them. But, even if they were to take such a statement at face value, the way the programs are structured, DAPA relief is unavailable to anyone who falls within any of the enforcement priorities, and in the very highest tier of the removal priorities is the category of people who are apprehended while crossing the border.

Chairman JOHNSON. Senator Heitkamp.

OPENING STATEMENT OF SENATOR HEITKAMP

Senator HEITKAMP. Thank you, Mr. Chairman.

I want to just for a moment examine the chart that the Chairman released, if somebody could put that up.¹ And, my question is for anyone on the panel. As we look at the increase in undocumented children across the border, what percentage of those in 2014 would be eligible for the relief in this program that we are talking about? Mr. Bellocchi.

Mr. BELLOCCHI. I am sorry, the——

Senator HEITKAMP. You may not, and I just want to kind of better understand, because I think the implication is that DACA was announced and, obviously, that led to a 2014 increase in the unaccompanied minors. Now, I could make an argument that might have had more to do with conditions that Ranking Member Carper talked about and also the anti-trafficking laws that were passed that gave free entry to people from Central America. But, is it not true that no one who crosses the border in 2014 is eligible for this program? Is that not true?

Mr. BELLOCCHI. I understand that is correct, yes.

¹ The chart referenced by Senator Heitkamp appears in the Appendix on page 104.

Senator HEITKAMP. And, it might be driven by false knowledge of what is happening or an impression about what is happening, but no one crossing the border in 2014, who is caught crossing the border in 2014, would be eligible, is that correct? Mr. Moran.

Mr. MORAN. Yes, unless they fell under a DAPA program if they were a parent of a U.S. citizen or a legal permanent resident, they might be able to qualify, but—

Senator HEITKAMP. Right.

Mr. MORAN [continuing]. Not children.

Mr. GOSS. Could I just offer that I think the rules for the new DACA are that people have to have entered the country before sometime in June 2010. So, people who have entered after June 2010, which are these people, would not qualify under the extension of DACA.

Senator HEITKAMP. That would be correct, and also if we drew a line in November when the President announced the expansion and then took a look at when most of those unaccompanied minors crossed the border, it would be early in the spring during the civil unrest in El Salvador and Honduras, is that not correct? Anyone?

Mr. BELLOCCHI. Well, I will just mention that the regulations for DAPA have not actually been issued yet, so the thresholds and requirements we are not too clear on what they are yet.

Senator HEITKAMP. I have no doubt, and I think we saw that in the spring, that there is a combination of issues that drive this kind of rush to the border, one of which I share, Mr. Moran, your concern about updating border strategy and taking a look at what actually is going to work. I have had a fair amount of opportunity to spend time on the border, some officially, some unofficially, meet with ranchers, meet with farmers, who are encountering this every day, and are very concerned about the safety of their family. We know that. Very concerned about the safety of your officers as we move forward with border security.

And, I will say that this is the wrong way for Congress to adopt policy. I do not think any one of you on this panel can say this is the right discussion to be having, whether it is politicizing the Department of Homeland Security because of an Executive Order, or whether it is ignoring true, honest to goodness border concerns and border issues that we have, and taking a look at doing the right thing that is going to discourage policy to cross the border illegally long-term.

And, so, the frustration that I have is that there are tons of challenges in all this, and comprehensive immigration reform, comprehensive border security analysis is what we need, not politicizing this issue.

And, if I can just, Ms. O'Connor, you may not know this, but I used to be the Tax Commissioner in North Dakota and I spent a lot of time dealing with tax fraud and schemes, and during my time, it was all those horrible people in prison who were filing false returns and, actually, IRS was issuing refunds to people who were felons and had been locked up for 20, 30 years.

Ms. O'CONNOR. They still do.

Senator HEITKAMP. Right. So, as we are analyzing this, the concern that I have about the IRS goes way beyond the potential for abusing the Child Tax Credit and the potential for abusing the

Earned Income Tax Credit. It goes to an antiquated system that should immediately be able to indicate and catch when you are mailing a refund to one address that numbers in the millions. That should not happen in any kind of automated system.

Ms. O'CONNOR. Twenty-four-thousand checks to a single address in a single year should have raised somebody's suspicion.

Senator HEITKAMP. Right. And, so, we are talking about this in the context of border security when I am saying we need to take a look at what the IRS does not do in terms of automating their system to prevent that from happening, whether it is checks to prisons, whether it is unmatched Social Security numbers and Tax Identification Numbers, to actual work product. I mean, these are issues that the IRS could solve with the right amount of resources and the right amount of attention. I question whether we should be just focusing on the challenges that these kinds of frauds present as a result of illegal immigration.

Mr. Moran, it looked like you wanted to——

Senator CARPER. Would the Senator from North Dakota yield just for a quick clarification? The problem that has been raised here, 24,000 checks sent to a single address, IRS has changed the rules to allow only three checks to a single address or account, so message heard.

Senator HEITKAMP. Yes, but I will tell you this, that for every time you think you have closed this kind of opportunity, another opportunity will open, and the IRS needs to be more vigilant as we look at a system that, I think, encourages a rapid refund. We are getting more and more automated and we are very proud that we can turn around refunds and get them in people's bank accounts, but maybe we ought to take a pause and take a look at what we are giving up in terms of security of the system for rapid turnaround.

Mr. Moran, you looked like you wanted to offer a comment.

Mr. MORAN. When you were asking, Senator, who qualifies for this, I think one of our concerns is that the messaging on the training from CBP has been inconsistent, at best. It says that the Presidential priorities, level one, aliens apprehended at the border or ports of entry while attempting to unlawfully enter the United States. And then in the same document it says, the impact of DACA and DAPA on CBP, it says, Immigration and Customs Enforcement (ICE) and CBP are instructed to immediately begin identifying persons in their custody as well as newly encountered individuals who meet the above criteria and may thus be eligible for deferred action to prevent the further expenditure of enforcement resources with regard to these individuals.

If we are encountering people, the vast majority of people that Border Patrol Agents encounter are newly arrived in this country illegally. Our concern is that this will be watered down and that these people who should be ineligible will somehow be made eligible.

Senator HEITKAMP. And if, in fact, that happens, I would share your concern. But, at this point, based on what I understand the program to be, those folks currently crossing would not be eligible.

If I could just ask one additional question for Mr. Moran, because I believe that the officers' voices at the border should be heard. I

agree with your points of view in terms of training. Really appreciate that you mentioned the Northern Border, being from North Dakota, being understaffed. And, I just want to explore a little bit about the one thing that you did say that was you think that there should be Border Patrol Agents in Phoenix. Where do you see the boundary between ICE and Border Patrol, and I mean, I could make an argument that at the Phoenix location, that is ICE's responsibility, correct?

Mr. MORAN. It is a very difficult line to demarcate. Our former Chief, David Aguilar, had delegated that authority in an memorandum of understanding (MOU) to ICE, that they would have the primary interior enforcement capabilities. We both have the same authority. Our opinion is that both agencies should be working to secure the United States, whether that be at the border or at the interior.

Unfortunately, in the past several years, policy within CBP has restricted the ability of Border Patrol Agents to work at these transportation hubs, and it seems that any enforcement activity that is successful is restricted and we are now looking at the possibility of our checkpoints disappearing, for lack of a better term, because they have been successful, and that would basically cede the egress routes from the border into the interior of the United States.

So, to answer your question, I do not know where the line is, but somebody needs to be working in the interior, and in our opinion, ICE does not have the resources or the institutional priorities to go after that, and I think that is very evident in the rebranding of some of their agents from ICE Agents to Homeland Security Investigations. Immigration seems to have been forgotten in their title.

Senator HEITKAMP. OK. Thank you.

Chairman JOHNSON. Before I call on Senator Lankford, I think at least twice, maybe three times now, we have heard the charge, and I want to add a little balance to the conversation here, that somebody is politicizing the defunding of DHS. The fact is, yesterday, we held a vote to proceed to debate on the DHS funding bill. I think every Democrat voted against proceeding to that debate. I mean, if we want to have an honest debate, I think that is the way to do it, on the floor of the Senate. Allow an open amendment process and let us actually debate the issue. But, the Democrats denied that cloture vote. So, if there is a charge of politicization, I think we need to at least look at the facts. Senator Lankford.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. Thank you, Mr. Chairman.

Thank you all for being here, as well, and for the conversation. I was in Central America last September, and to go back to this chart, as well, and some of the conversation, I led a bipartisan delegation there, met with individuals from the government, from our government, from resident governments, from embassies and others to be able to visit and ask some specific questions. Why did we see this big surge? Was it in Guatemala? Was it in Honduras? Was it in El Salvador?

In all three countries, we heard the exact same thing. There are push and pulls. The push are the gang violence and the lack of jobs and all those things. But, all of them came back and said the

spark, the pull, was DACA, that when DACA went through, the coyotes in Central America spread the word that if you get to the United States right now and you are a minor, you can stay. And, the reality of the number of adults that were already here and the connection that we have with the children that are crossing unaccompanied connecting with a parent, typically—in some statistics, 80 to 85 percent of the children that were coming already had a parent in the United States—that when they came and were connected, those children, I heard over and over again, when they got to the United States were posting on their Facebook page a picture of them holding up their notice to appear in court saying, “I have legal papers,” telling all their friends, “Come.”

Now, my question is, to follow-up on Senator Heitkamp’s, how many of those individuals that we have seen from 2012, 2013, and 2014 have been returned back to their home country? We talked before about how many were eligible. How many of those folks have been returned? They came illegally across the border. They were moved to the interior. Does anyone know the percentage of returns there?

Chairman JOHNSON. James, it is actually on the bottom of the graph here. Again, it is not certain, but we got this, I think, from an L.A. Times report.

Senator LANKFORD. Correct.

Chairman JOHNSON. It is very difficult to get the information.

Senator LANKFORD. It is very difficult because no one is answering back and forth on it from any of the agencies. I can tell you, when I have talked to the different agents, the different folks, the numbers that I get are no higher at any time than 5 percent, that 80 percent-plus do not show up for their notice to appear, and those that do often are given some sort of deferred ability to be able to stay.

And, so, while we can debate about are they going to be returned, do they have legal status, they are here. They are not being returned. And, so, they are back into what Officer Moran was talking about before. They are living in the shadows, knowing if I stay here long enough, as has already been seen—the previous DACA was only for 2007, and then a year later it was extended to 2010, and the assumption is from every coyote in Central America, get there as fast as you can. They will keep moving the target.

So, that is the challenge that we face at this point. I understand what it says. That is not what is happening. And, everyone in Central America is telling us that over and over again, and we have to be able to resolve this and what do we do here.

So, let me ask just a couple of quick questions. Does anyone know what data we are getting for background checks for these individuals going through DACA and through DAPA from Central American countries? When we do a background check, are we getting information on that individual from El Salvador, from Honduras, from Nicaragua, from Panama, from Venezuela, on the activities of that individual while they were in that country?

Mr. BELLOCCHI. I interviewed a number of people regarding background checks when I prepared for this testimony and I asked that question, how many background checks, or will the background checks really check foreign country criminal background,

and the only answer I got was that the FBI does have a relationship with Interpol. They may have red flag notices and things like that. But, that really is talking about mainly Western European countries and high-profile criminals.

Senator LANKFORD. So, if we have an individual coming to the United States from Venezuela, if they have stayed here long enough, at this point, we are not checking Venezuelan records to find out what happened, what they did in that country, to be able to have some sort of legal status here?

Mr. BELLOCCHI. Not to my knowledge.

Senator LANKFORD. Does DHS require in their new guidelines the processing or payment of taxes before they can go through this? Is DHS requiring before you get legal status that they pay back taxes?

Mr. BELLOCCHI. Well, with DAPA, again, the regulations are not out, but I understand that is one of the requirements. Perhaps my colleague can answer that better.

Ms. O'CONNOR. It is not a requirement under DACA, and as my colleague says, the DAPA regulations are not out yet. But, no, there is no requirement that taxes already have been paid.

Mr. COOPER. Senator, my understanding is that if anyone is given deferred action under the program, then they will be able to get a Social Security number and then tax compliance can be enforced, and that previous tax behavior can be a positive or negative discretionary factor, and that discretion is something that the officers are instructed to observe.

Senator LANKFORD. But, at that point, they already have other legal paperwork. So, you are saying they get legal paperwork and they are told, you should pay back taxes.

Mr. COOPER. I think their past tax behavior, whether they paid taxes or not, is something that can be considered discretionarily up or down in the process of deciding whether to give deferred action, but that once you get deferred action, then you have a Social Security number and tax compliance can be fully enforced.

Senator LANKFORD. But, DHS does not require, before they give deferred action to an individual, that they pay back taxes before they get that deferred action.

Mr. COOPER. I do not believe so.

Senator LANKFORD. That is not a requirement.

Mr. COOPER. I do not believe that is a requirement.

Senator LANKFORD. So, it is not a requirement that they do a background check in a home country. It is not a requirement that they pay back taxes before they get deferred action.

Mr. COOPER. DHS would have to supply you with the more precise information about what happens between the law enforcement authorities and other governmental authorities of the sending countries and ours, but my strong understanding is that, especially ever since these spikes, that there has been a great deal of interaction in those countries with law enforcement there between not just the Department of Homeland Security, but the Justice Department and other law enforcement authorities—

Senator LANKFORD. No, the spike, as I can tell you from being in Central America and asking some of those questions, the spike is for the individuals that we are returning that we are trying to

verify before they return to their home country, who this individual is, and those are typically adults. Obviously, adults typically, as the Border Patrol Agent can tell us on that, that have said, "I want to voluntarily return," because if you get to the border and you are picked up and you are apprehended and you say, "I want to voluntarily return," it cleans your record up.

The coyotes in Central America, as we talked to everyone there, said they are now doing a three-for-one deal. You pay \$4,000 and they will give you three attempts to be able to get in the United States. If you are picked up the first two times and say, "I want to voluntarily return," they will bring you back. Literally, they meet you at the bus station when you return and start the return trip again. So, for one amount, they can do three times there. As long as you keep saying, "voluntarily return," there is no strike on your record. You just keep coming until you actually penetrate the system. So, that is part of the challenge. It is getting us off-topic on this, though.

The individuals that come in to register for DACA and DAPA and DHS determines they are not eligible for this program, what happens to those individuals? They have come in and said, "I am not legally in this country. I would like to get some sort of deferred status." For whatever that percentage may be, what happens to those individuals?

Mr. COOPER. Well, one thing that happens is, at that point, DHS has all their information under circumstances where they did not before, and then I think the second is that applying the removal priorities that were set out in revised form in November, DHS would then make a decision whether or not to add that person to the——

Senator LANKFORD. So, they may say they are not eligible to have deferred status, but they also may say you can also stay here just in the shadows?

Mr. COOPER. That is correct.

Senator LANKFORD. That is up to their discretion. So, they have already said, "I am in this country illegally. I am not eligible for deferred status." That has just been determined. But, it is also, "You can stay." It is also under their purview to be able to do.

Mr. COOPER. It is not, "You can stay." It is, rather, I am going to spend my enforcement efforts on higher priorities, according to the——

Senator LANKFORD. And you stay.

Mr. COOPER. That is right, but the nature of the determination is a different one.

Senator LANKFORD. But, the result for that individual is the same.

Mr. COOPER. Then they would be part of the millions of people who are subject to removal, but not within the removal resources of the Department of Homeland Security, which is, I think, one more argument in favor of legislative reform.

Senator LANKFORD. And one more argument why Agent Moran and his counterparts have such tough morale issues in trying to face the issues of what they try to do.

I yield back.

Chairman JOHNSON. Senator Booker.

OPENING STATEMENT OF SENATOR BOOKER

Senator BOOKER. Thank you very much, Mr. Chairman.

I just, as Senator Baldwin had said, I just want to express my frustration and concern. Whether it is politics or not, the reality is last year, we passed a spending bill for every other Department agency in the United States of America, but separated one out, the Department of Homeland Security, and the stated reason was over immigration issues.

But, as a guy who has stood in my city and watched the terrorist attacks across the river, as a guy who has the third-busiest port in my State, as a person who has seen Hurricane Sandy sweep through and kill people in my State, the fact that now, for whatever reason, politics or not, we did not include last year as part of the omnibus funding for the Department of Homeland Security. Our inability to pass a bill has now put at risk many of the issues and concerns that we are briefly touching on here, which is the safety and the security of our Nation, whether it is the nuclear detection equipment that needs to be upgraded at my port or whether it is issues related to coordination of personnel.

All of this right now is in jeopardy, and we would not do this to the Department of Defense, but somehow, the Department of Homeland Security, which is our buffer and often the preventative agency for our safety and security, whether it is from natural disaster—and, by the way, I am concerned because the funds necessary to respond to wildfires, to floods, to hurricanes, is now in jeopardy because we are not moving forward. Whether it is politics or not, I do not know, but I know we have the leadership that should be able to address what are the common concerns of our country.

These issues are really important, and Shawn Moran, I want to thank you, not only for having the best haircut on this panel—[Laughter.]

But I want to thank you, sir. You and the people you represent do this country a great service. You are honorable, and from my experience, courageous in what you all face every day, and your testimony, I think, in some ways is the most important testimony here.

We are not doing enough to support you, to give you the resources you need. And, as a guy who oversaw a municipal law enforcement agency, when you do not support your officers in the proper way, you put them at risk. A lot of the things that you brought out in your written testimony and your spoken testimony really was important for my staff, and things that I know are important, like the ratio of supervisors. You guys have a lot of supervisors, it seems, but not enough folks that are actually doing the work in the field. And, these are things that we should pay attention to and react to.

So, I want to thank you and just compliment you on the record, because I know from personal experience how important the work you do and you stand out there.

The only small issue—and for me, it is not a small issue—and I think that Senator Lankford, who I really appreciate actually having gone down to Central America to see for himself what was going on, he talked about the push and the pull factors. You really

do not have the resources to know if somebody is telling the truth or not. And, the one thing you said about these folks having written scripts before them about what to say, just because a person has a written script and has practiced that script, kind of like the five of you have done preparing for this, does not mean that they are not sincere people and really facing a threat, is that correct?

Mr. MORAN. That is correct. We do spend a lot of time when we apprehend people, because, obviously, when it is busy it is going to take quite a bit of time to transport them, so, obviously, you are going to talk with them, and we have even had our intelligence people interview them, and I believe it was six or seven out of ten claimed it was because of DACA, rumors of immigration reform, amnesty, and the like that they were coming here. There were those that claimed violence, economic conditions, but by and large, the majority was because they had heard from somebody else that was released into American society.

Senator BOOKER. I really appreciate that, and I imagine what you are saying, there is a lot of voracity to that. But, there are people that are escaping violence and rape and torture and——

Mr. MORAN. Absolutely.

Senator BOOKER [continuing]. As we see with—and have encouraged other people to do, right now, Jordan, we are telling them, hey, take people into your country that are coming from Syria, and the way that Canada has stepped up to help. This is a nation that has a history that when people are being persecuted, that we do something for them. You understand that, correct?

Mr. MORAN. I do. I would add, though, that the incentive for people to come here to this country puts our members at risk. We have had 120 agents die in the line of duty. The majority of them have been since I became a Border Patrol Agent. So, the trend is definitely increasing, that it is more dangerous——

Senator BOOKER. And just because I am losing time, I agree with that point very well.

Real quick, Mr. Cooper, you talked about the tremendous economic benefits that have been put forth by a non-political organization called the Congressional Budget Office, the boon to our economy. You talked about \$90 billion. You talked about money off of the national debt, which concerns me. You talked about the improving of the social safety net, greater contributions. The one thing you did not mention is jobs, jobs for Americans. If you are driving an economy, increasing GDP, if you are having more entrepreneurs, is there a job benefit to expanding job opportunities for the United States, for Americans, as well?

Mr. COOPER. I think that the Council of Economic Advisors also concluded in its report that with the economic expansion that would come with DACA and DAPA, there would also be a job expansion, and their conclusion was that these programs would help, not harm, American workers in searching for jobs.

Senator BOOKER. Right, and you get more entrepreneurs in our country under a legal pathway. You are increasing a lot of economic benefits. One is job creation, as well.

Mr. COOPER. Right.

Senator BOOKER. I appreciate the law enforcement aspects you said. As a guy, again, who was frustrated as mayor that I could not

get undocumented immigrants to come—there is fear coming forward and reporting crimes, cooperating with the police. It was very difficult. And, they are also victimized by crimes because people singled them out. I appreciate you speaking to law enforcement.

The last question I just want to ask, to be respectful of the time, and I am still trying to get in good with the new Chairman, real quickly, is about the Child Tax Credit. The idea is that if you have a child, right, that is a U.S. citizen, you may not be a documented immigrant, you may not have citizenship, but the idea is that for an American child to claim that credit, right, we do not want to punish a child just for having undocumented parents, right? And, the way this is structured, the claim of the Child Care Tax Credit is really to get money and have a more stable household for that child, is that correct?

Mr. COOPER. It is to benefit the child. My understanding is that that tax credit and the Earned Income Tax Credit effects were taken into account in the CBO's estimate of the effects that elimination of DACA and DAPA would have on the Federal deficit.

Senator BOOKER. So, you still get the economic benefits. It does not diminish that, as the estimates of the CBO was doing, and American children, who may have undocumented parents, have more food on the table, are better prepared to go to school, and have the benefits of the resources that a tax credit is intended to do and have a better start in life, is that correct?

Mr. COOPER. Correct.

Senator BOOKER. Thank you very much, Mr. Chairman.

Chairman JOHNSON. I appreciate your stylish haircut, but you still went over time— [Laughter.]

But we will not write it down.

Senator BOOKER. I assert to you, I will try to get better, sir.

Chairman JOHNSON. Senator Ayotte.

OPENING STATEMENT OF SENATOR AYOTTE

Senator AYOTTE. I want to thank the Chairman and I want to thank all of our witnesses that are here.

First of all, I would like to follow-up, Ms. O'Connor, on the Additional Child Tax Credit (ACTC) issue, because I know that Senator Booker just made the point that if you are an American child but you are the child of an illegal immigrant, that this is something that you should receive. But, as I understand it, the Treasury Inspector General (IG) has done a lot of looking at not only the Additional Child Tax Credit, but the Earned Income Tax Credit, and one of the issues is that, right now—some people did some individual work and studies on that tax credit, as well, and there are people being claimed for that tax credit, children that do not even live in this country. In other words, because right now, you can seek that tax credit whether or not you have a Social Security number for the recipient or the child, so can you speak a little bit about some of the fraud we have seen in the Additional Child Tax Credit.

Ms. O'CONNOR. Certainly. You are exactly right. The studies have shown that—the Inspector General's studies have shown that tens of billions of dollars are paid every year with respect to children who might not exist at all, and if they do, they might live in

a foreign country. One of the requirements is that the child is supposed to live with the person who is claiming the credit, but the IRS does not really have the wherewithal or maybe the motivation to confirm that that is the case. So, while it is very nice to think that the Additional Child Tax Credit is going to give some worthy kid more Cheerios in the morning and make sure he gets to school on time, that is not necessarily the way it is working out.

Senator AYOTTE. Yes, and I think that most Americans would be very troubled to think that we are giving refundable tax money that is all of the taxpayer dollars to fraudulent situations.

Ms. O'CONNOR. If I might just emphasize, as you said, we think of a refund as getting something back that you have paid, but this is not that. This is getting something back that you have not paid.

Senator AYOTTE. Correct, because based on what you are eligible, you have not paid it, but because it is an income eligibility issue and you get that—and it is \$1,000, I believe, or more per child—

Ms. O'CONNOR. Right. It is a welfare program operated through the Internal Revenue Code.

Senator AYOTTE. So, one of the questions I also wanted to follow-up on—so, under DACA and DAPA—and, let me just say for the record, I am someone who supported the immigration reform bill. I want to solve this problem. But, as I look at these Executive Orders, we are in a position where some of the things that I thought were very important in that bill, like the people that were patiently waiting in line getting—the individuals that were here illegally getting to the back of the line as a matter of fairness, the back tax issue as a matter of fairness, a whole host of provisions on securing our border that were incredibly important in that, and as I look at these Executive Orders, we are in a situation, just we have talked about the Additional Child Tax Credit, but I want to put in perspective for people how much money that is to the Treasury.

As we got the last figures which we were able to get, which were actually 2011, \$30 billion going out each year on the Additional Child Tax Credit. The other big refundable tax credit that we all need to understand is the Earned Income Tax Credit, and the Earned Income Tax Credit is also a refundable tax credit, like the Additional Child Tax Credit. Right now, to receive that tax credit, you have to have a Social Security number, is that right, Ms. O'Connor?

Ms. O'CONNOR. Yes, Senator.

Senator AYOTTE. And, so, these individuals under this Executive Order, as far as I can see, are immediately getting Social Security numbers, and with that immediate receipt of Social Security numbers, do we have any sense of the numbers—we are already paying out \$65 billion a year on this Earned Income Tax Credit. How many more billions are going to go out on the Earned Income Tax Credit for people who, by the way, are immediately getting Social Security numbers, who are, of course, not getting in the back of the line of the people who are diligently waiting here, and, so, do we have a sense of what those numbers are?

Ms. O'CONNOR. I do not have that number. Maybe one of my colleagues at the table does. But, I will also remind everyone that the Internal Revenue Service interpretation of these provisions is that

you get the credit not just this year, but you can file amended returns for the prior 3 years.

Senator AYOTTE. Wow.

Ms. O'CONNOR. So, everybody who gets a Social Security number now, multiply that by four to get the total impact this year.

Senator AYOTTE. Oh, I had not appreciated. So, if I get a Social Security number immediately, these millions of people that will receive this, then you could file back, presumably, for 3 years?

Ms. O'CONNOR. That is how the IRS interprets the rule, right.

Senator AYOTTE. And, by the way, we have talked about fraud in the ACTC. As I understand it, we have an improper payment rate overall even in the Earned Income Tax Credit of 22 to 26 percent.

Ms. O'CONNOR. That is right. That is what the Inspector General says.

Senator AYOTTE. So, I want to make sure that as we look at all of this, we think about the prior 3 years. One of the things I see in the Executive Orders is it is not clear. It says that you would be eligible for Social Security benefits, Mr. Goss, with 10 years of work history, as I understand it. Do we know what counts for work history? So, if someone was here illegally and working, could they use that work as their 10-year history and then immediately be eligible for Social Security benefits, as well?

Mr. GOSS. That is an extremely good question and many people have raised this issue, that people who have—and the primary potential source for that would be people who have been here in an undocumented form, but have been working with their employer and have been paying in the taxes, but not with a match between their name and a Social Security number because they have not been issued a Social Security number. In theory, if they can come to our offices and prove with pay stubs or whatever that, in fact, those were their earnings in the past, they could reclaim those earnings.

In practice, this is a rare event. We estimate that about 7 percent of all of the earnings that go to our earnings suspense file, because names and SSNs do not match, only about 7 percent is ever reclaimed, and the vast majority of that could be any one of us where an employer might have messed up our SSN when they submitted the numbers. So, very little of that, we expect, will be going out as benefit credits in the future, as very little has gone out in the past.

So, our estimates of the number of people receiving benefits, and from what I understand CBO has done mostly the same, is based largely on earnings that people will have going forward, developing their insured status.

And, Senator Ayotte, you are exactly right. For retirement benefits, you have to have 10 years' worth or 40 quarters of coverage. You can gain insured status if you are younger for, if you were to die, a survivor's benefit or disability benefit with less work time than that. But, again, relatively few people, we expect, will be actually achieving that in the relatively near term, and we have estimates in our testimony that show you, year by year, how many.

Senator AYOTTE. There are, I think, a lot of questions that are raised by all this on how it is going to work, and Mr. Moran, thank

you for your work, and many questions raised for those who do serve and defend our Nation and help us with the borders. So, I think this is one of the issues and challenges you face when something is done by Executive Order versus laws that are in place, and also for these individuals who are going to be in this status, what is the permanency of it. I think that that is why legislation is the way that we should do these things and why I have been someone who has been trying to solve this problem and I am very disappointed that the President has decided to take executive action on this.

Thank you.

Chairman JOHNSON. Thank you, Senator Ayotte.

I have just got a couple other questions. And, again, just to quickly bring balance to some of the comments made.

We would not be discussing DHS funding today had President Obama not taken the unilateral executive action. We would have probably passed an omnibus through the end of this fiscal year. So, that is the reason DHS funding is up in the air at this point in time.

And, again the way to address this DHS funding would actually be to put a bill on the floor and open it up to debate. We were denied cloture on that, not Republicans, that was basically Democrats who decided not to allow us to proceed to debate on the bill. I am not quite sure why, but that is just a fact.

Mr. GOSS, I have an actuarial note¹ that you issued in April 2013 to kind of answer the question that I was asking Ms. O'Connor about how many of the immigrant population, what percent is actually in the underground economy. Back then, you were saying about 3.9 million of 8.3 million, so less than half were actually in the underground economy. More than half, then, actually were paying into the system in some way, shape, or form, either with an illegal Social Security number or through the ITIN. Is that about what your estimates were in this current—

Mr. GOSS. That is correct, yes.

Chairman JOHNSON. OK.

Mr. GOSS. It is actually a little bit higher than that at this point, because our estimates back at the time of 2009 and 2010, had a significant number of people in the undocumented population who had, prior to 2001, when things were really tightened up about being able to get issued an SSN after birth, prior to that time, people could come in with perhaps not legitimate documentation and relatively easily get an SSN. After a specific time in 2001 that we all too well remember, especially Senator Booker, that has been tightened up and we see a much diminished number of people getting SSNs illegitimately.

Chairman JOHNSON. So, there are more people or less people in the underground economy versus 2013?

Mr. GOSS. We would say a larger share of the workers who are in the undocumented population now are in the underground economy.

Chairman JOHNSON. OK.

¹ The document referred to by Senator Johnson appears in the Appendix on page 105.

Mr. GOSS. And, if I might just add on that one little thing, so important in terms of tax policy, one of the biggest issues I would hope that you all would pay attention to would be the fact that, according to the Bureau of Economic Analysis of the Department of Commerce, one-half of all of the compensation to independent contractors and self-employed individuals in this country is not reported for tax purposes. That is obviously not all from undocumented individuals, but there is an awful lot of non-reporting—

Chairman JOHNSON. Right.

Mr. GOSS [continuing]. Of income, and that would make a big difference if all of that income was reported for payroll taxes to Social Security and Medicare as well as for income taxes.

Chairman JOHNSON. Oh, yes, and that is kind of a side view—

Mr. GOSS. That is a different thing.

Chairman JOHNSON. So, I do want to explore the assumptions and the estimates in terms of this being a boon to our GDP. Now, I certainly understand, because I come from the private sector, that what makes up an economy is human capital combined with financial capital and that is what drives an economy. When you increase the supply of human capital through births and through immigration, that will increase the size of GDP.

What puzzles me about the estimates coming out of here is we have already got this population of 11 to 12 million people in this country illegally. Many of them are working either in the formal or underground economy. So, I do not know what this temporary deferred action, how that all of a sudden causes this surge in economic activity. It just really makes no sense to me whatsoever. Mr. Goss.

Mr. GOSS. Thank you very much. Excellent question. Actually, the component of the very small extra increase of only about 0.15 percent increase in the level of GDP in 2024, relatively little of that is from the DACA–DAPA. The only extent is because we assume that once people gain this status, they will be less likely to leave the population. If they remain in the population, as you indicate, they will be part of our population and our base for employment. The biggest share of increased GDP that, really, is the other net flows, the entrepreneurs coming in by 2024.

Chairman JOHNSON. Again, that should occur through a legal process, and there is no denying that. If we have more entrepreneurs coming through legal immigration process—

Mr. GOSS. Exactly.

Chairman JOHNSON. By the way, I am supportive of if we get the smartest minds in the world, we want them here in America. If we educate them, we want them to stay to produce those innovations and grow our economy. But, again, that is a legal immigration system versus an illegal one, which creates all kinds of problems from the standpoint of national security, public health and safety. And, again, it is a broken immigration system, which I am all for fixing.

But, my final comment is, until we secure the border it is never going to be perfect, but until we do a better job—and I think Americans are way ahead of us, the public is way ahead of the political process here in terms of wondering why we have not done that—until we do that, any part of our immigration law, tax law, that creates an incentive for illegal immigration—I would say DAPA

and DACA have created that incentive—as long as we create those incentives for illegal immigration, we will have more of it. It will create higher pressure on the border, give Mr. Moran and his compatriots real fits, make their job far more difficult.

So, this really, from my standpoint, is the top priority of this Committee: to craft an effective and a workable border security bill combined with an immigration enforcement bill that really does take a look at our current immigration laws and try to eliminate or at least drastically reduce the incentives for illegal immigration, because as long as those incentives remain and we have not secured the border, it is going to be right back to 1986. I mean, you can do whatever you want to do to grant amnesty or take executive action, but as long as we have those incentives in place without a secure border, we are just going to make the problem worse.

But with that, that kind of concludes my participation. Senator Carper.

Senator CARPER. Good. Thank you, Mr. Chairman.

I just want to go back on a couple of issues that were raised just to try to provide some clarity, and Mr. Goss, if I am misstating, just let me know. But, I think in instances where formerly undocumented immigrants now have Social Security numbers and can now claim Earned Income Tax Credit retroactively, they have to have paid taxes. They have to have gone back and also filed tax returns for, I think, at least 3 years, is that correct?

Mr. GOSS. That would be my assumption for——

Senator CARPER. That is correct.

Mr. GOSS. Yes——

Senator CARPER. That is correct. Thank you.

Another point, just for clarification, I think, also, in 2012, I am told that the IRS reformed the ITIN application process and far fewer people apply today. As a result, we have, probably, I expect we have a lot less fraud.

So, some of the concerns that have been raised, it is important that they have been raised. Some of them have been addressed, and those that have not, we need to address them, so thank you for doing that.

I am just reminded of a couple of thoughts here as we come to the end, and one of those is—it is unfortunate that we are having this conversation. It is unfortunate that we are having this hearing, because it is unfortunate that we did not pass comprehensive immigration reform in the last Congress. We should have. We would not be having these questions, these battles, and spending your time and our time dealing with this. That is what we should be doing.

And, to the extent that our Republican friends have concerns, and I appreciate those, over what the President, what the Administration has done, they have recourse in court. They are doing that. But, I sure as heck hope that we do not shut down the Department of Homeland Security on February 27 when they have a heck of a lot to do. That would be tragic.

Mr. Moran, I want to also thank you and the folks that you represent for your continued service, to our country. And, there is plenty we can do, and when the Chairman and I and Senator Sasse

are down on the border, we will hear about some of the things that we ought to do and I think your input is appreciated and helpful.

But, one of the problems in the immigration reform bill that was passed was I think we doubled the number of people on the Border Patrol on the border. We do not need to do that. Do we need some extra people? Yes, we do. But, we especially need people at the ports of entry to do the job there, and we need what I call force multipliers, force multipliers that are actually between the ports of entry that will enable your folks to be more effective in the work that they do.

I will continue to make this point to my grave—I have always been a big believer in addressing not just the symptoms of problems, but root causes for problems. That is the key. We are really good around here at addressing symptoms of problems. We are not so good at going at the underlying causes, and we need to do both.

Do we need to strengthen our defenses on the border? Of course, we do. Do we need some more people? Yes, we do. Do we need better technology? We do. The idea that we put drones up in the air and fixed-wing aircraft in the air without advanced radar systems which can actually from 25,000 or 30,000 feet see exactly what is going on on the ground in all kinds of weather, day or night, and the fact we just send aircraft out, maybe with the guys or gals with binoculars looking for people coming to the border, that is crazy.

I spent a lot of time in my life in airplanes, some of it overseas and over the water around the world and looking for people in ships, in wreckage from ships, people in life rafts with binoculars from 500 feet or 1,000 feet. It is hard to do. And, when we have the technology and we are not using it, shame on us. That is the kind of thing we should be doing. I call them force multipliers.

But, the other thing that is imperative as part of the, on all of the above, is thoughtful policy to better strengthen our borders. A key element of that is to make sure that in places like Honduras, Guatemala, and El Salvador, which is where we are getting most of the illegal immigration across the South Texas Border, where they have police that do not police, where they have prosecutors that do not prosecute, where they have judges that do not administer justice, where they have correctional institutions that do not correct behavior, where they have school systems where, in Honduras, grades one through six, that is it. Half of the kids only make it to grade six. Of those that make it to grade six, only half can read at a sixth grade level. Only 5 percent can do sixth grade math.

In these countries, Honduras, Guatemala, El Salvador, they pay two or three times more for energy than they ought to be paying because they use petroleum. They use oil. Meanwhile, they have low-cost natural gas from Mexico, and that ought to be made available to those three countries to help create a more nurturing environment, lower their energy costs.

So, while we do all the stuff on the border that we are talking about, we need to help them restore the rule of law. We need to make sure that they are doing the kinds of things that they ought to be doing—they want to be doing—with respect to their workforce.

Hurricane Mitch came through Honduras in 2007, destroyed half of the secondary roads. And, you have folks in Honduras, one part of Honduras would like to be able to export to a neighboring country and the roads do not even let them go 10 miles to make that work.

It is not for us to fix all these things. It is not all on America. We can be part of the solution and we need to be. Again, they can do it. We can help. And the other countries, including Mexico and Colombia, the Inter-American Development Banks, they need to be a part of it.

The last thing, the last question I want to ask is this, and I want to go back to security implications, if I can. Secretary Johnson and some others have cited several security benefits from deferred deportation initiatives. First, these programs will prompt many of the people living in the shadows to step forward and undergo background checks and enter biometrics into our systems.

Second, it will help DHS and others focus limited enforcement resources on the highest priorities for deportation, those with criminal backgrounds or national security risks, and recent arrivals without ties to the community.

Third, it will facilitate better trust and communication among immigrant communities and local law enforcement, improving the safety of communities nationwide. That is why a number of law enforcement organizations have endorsed the deferred deportation initiatives.

A question for you, Mr. Cooper. You dealt with some of these issues of prioritization while at INS, I believe, which included the immigration functions of what is now CBP and ICE, as well as USCIS. Do these arguments make sense to you based on that experience and your work since?

Mr. COOPER. They do. I think the abilities of the Department have improved since that time, but that makes entire sense to me, and I think that that helps focus on the key question that is before the Committee, is comparing a world without DACA and DAPA to a world with DACA and DAPA and does that enhance the ability of the Department to carry out its law enforcement responsibilities more effectively. And, it seems to me to take the two scenarios that have been raised.

One, why would DAPA and DACA expand economic activity, and my understanding is that the answer to that is that with DAPA and DACA, there is going to be more people moving into the tax-paying category. There will be more people who are able to work lawfully and, therefore, able to get better paying jobs, consequently, wage growth pressures and so forth. That would not be the case without the authorization of employment for these people who are, after all, here in the country already, and in most cases working already, just in the shadow economy.

On the law enforcement side, with DAPA, there is the scenario that the Senator was raising before about what happens when someone is not eligible but has presented themselves. I agree that it is counterintuitive that you might just decide not to try to remove that person when they are right there in front of you. On the other hand, what you have which you did not have without DAPA is all that person's information in the law enforcement database

which allows for better enforcement if they become a removal priority, or if the resources roll around, or if there is a criminal issue later. And, if that officer has made the decision, well, you are someone who does have a U.S. citizen child but cannot prove that you have been here for 5 years, you are not eligible for DAPA, but I have bigger fish to fry, I think most people would regard that as a reasonable exercise of discretion given the finite resources that are facing the Department.

Senator CARPER. Good. Thanks.

Mr. Chairman, I think it has been a good hearing. Let us work on comprehensive immigration reform. Thank you.

Chairman JOHNSON. Thank you, Senator Carper.

Coming from a manufacturing background, root cause analysis is just in my DNA. I am hoping this was kind of that first step in trying to develop that root cause analysis.

I want to thank all the witnesses again for your thoughtful testimony, both written and oral here.

This hearing record will remain open for 15 days, until February 19 at 5 p.m., for the submission of statements and questions for the record.

This hearing is adjourned.

[Whereupon, at 12:05 p.m., the Committee was adjourned.]

A P P E N D I X

Opening Statement of Chairman Ron Johnson “Deferred Action on Immigration: Implications and Unanswered Questions” Wednesday, February 4, 2015

As prepared for delivery:

Good morning and welcome.

On November 20, 2014, the President announced several executive actions, including plans to expand the Deferred Action for Childhood Arrivals Program (DACA) and to extend Deferred Action to Parents of Americans and Lawful Permanent Residents (DAPA). Today's hearing is aimed at obtaining a more complete understanding of the logistical, financial, and national security implications of these policies.

The Department of Homeland Security (DHS) has stated it will grant legal presence and immigration benefits for individuals who entered this country illegally provided that they:

- Have continuous residence in the United States since January 1, 2010;
- Pass a criminal background check; and
- Pay taxes.

On my first day as Chairman, I sent DHS Secretary Jeh Johnson a letter outlining many unanswered questions associated with these policies. Last week, I received a response to my letter from the Department. While I thank Secretary Johnson for being responsive and answering a number of important questions, still others remain unanswered.

The witnesses we have invited today will help detail some of the specific implications of the Administrations executive policies.

Mr. Stephen Goss, Chief Actuary for the Social Security Administration, will outline the implications of providing Social Security Numbers (SSNs) to deferred action recipients, including the impact of such policies on our long-term Trust Fund liabilities. DHS has confirmed that “if USCIS approves the request for deferred action and the request for work authorization, the requestor may be eligible for a Social Security number.” SSNs are permanent identifiers that enable individuals to receive Social Security and Medicare benefits. This raises the obvious question: Why are we providing a permanent benefit to those eligible for temporary relief?

Ms. Eileen O'Connor is a tax expert who has first-hand experience prosecuting tax fraud for the Department of Justice. She will testify regarding the tax policy implications of providing SSNs to deferred action recipients. CBO has confirmed that those who receive deferred action are considered lawfully present and eligible to receive Medicare and Social Security benefits. This raises another question: what other financial (including tax) benefits will flow to non U.S. citizens?

We are also interested to learn how agencies within DHS will implement these controversial policies. United States Citizenship and Immigration Services (USCIS) is the primary agency tasked with their implementation. Mr. Bellocchi, a former Deputy Ombudsman for USCIS, will provide his perspective on how prepared USCIS is to implement these types of mass enrollments. For instance, how will the agency determine five-year continuous residency and how susceptible to fraud are the documents USCIS will be examining? How will USCIS conduct background checks, how thorough will these checks be, and what crimes will result in a denial of deferred action? Most importantly, we now know that despite the validity of a document or result of a background check, this is a highly discretionary program and the decision to grant deferred action will be entirely in the hands of a newly hired USCIS adjudicator. How will this approach affect the overall policies?

While USCIS will largely be charged with implementing the deferred action policies, documents reveal that Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) agents have received training on how these policies will affect their day-to-day activities. Since a priority for this Committee is to pass a border security and enforcement bill, it is important to understand how the President's executive actions will put more pressure at the borders and affect the work of front line patrol agents charged with securing them. We look forward to hearing from Mr. Shawn Moran, Vice President of the National Border Patrol Council, on this matter.

Building on lessons learned from the Administration's 2012 DACA order, we are concerned that the President's actions in November will result in a new surge at our borders, similar to the surge of Unaccompanied Children from Central America we saw last summer. While we know that DACA was not meant to apply to the unaccompanied minors who arrived last summer, it certainly appears to have affected their decision to make that terrible and dangerous journey on a train known as La Bestia (*The Beast*). In 2014 the number of unaccompanied children apprehended rose from approximately 16,000 in 2011 to 68,631 in 2014.

Finally we are pleased to welcome Mr. Bo Cooper, previously General Counsel for INS. We are interested to learn what you believe will be the implications of the President's executive policies.

Let me conclude by saying that this hearing has been purposefully structured to focus on informing the Committee. This hearing is *not* about the legality or the constitutionality of the President's policies. I have my own opinion on those issues, but will reserve that examination for future hearings, either by this Committee or other committees of jurisdiction.

We all share the mission of this Committee: "To enhance the economic and national security of America." In furtherance of that mission, it is important to examine whether the Administration's executive actions on immigration enhances or reduces the security of our nation. Hopefully, this hearing will help answer that important question.

Opening Statement of Ranking Member Thomas R. Carper
“Deferred Action on Immigration: Implications and Unanswered Questions”
February 4, 2015

As prepared for delivery:

We are here today to learn more about the implementation of the President’s executive actions on immigration. I think that is fair and reasonable oversight for this Committee. As with any new government initiative, there are likely to be a variety of bureaucratic challenges that must be addressed. So I look forward to hearing from all of our witnesses about the challenges that might lie ahead, as well as some possible solutions.

Last Congress, this Committee – and the entire Senate – spent a great deal of time examining our nation’s broken immigration system. After months of debate, two-thirds of the Senate – both Democrats and Republicans – came together to pass a comprehensive immigration reform bill.

The bill was not perfect, but it addressed a number of issues that have plagued our immigration system for years. Perhaps just as important, it would have also reduced our budget deficit by nearly \$200 billion over the next 10 years and by an additional \$700 billion over the following 10 years. Moreover, it would have grown our gross domestic product by as much as five percent over the next 20 years.

As we know, unfortunately, the House did not act on that legislation. As a result, we continue to be left with a broken immigration system that meets neither our economic nor our security needs. Faced with paralysis here in Congress and the continued inefficiency and unfairness in our immigration system, the President decided to try and make several temporary improvements, hoping it would spur those of us in the Congress to finish the job we began almost two years ago. Those improvements – or changes – were not meant to be permanent, but they are what bring us to this debate today.

Look, I know that many of our colleagues have strong misgivings about the President acting on his own on these matters. Nonetheless, I hope we can set aside any frustration over tactics and look at the substance of what the Administration is trying to do. If we can find a way to do that, I think we just might find room for common ground at the end of the day. After all, that’s what the American people sent us here to do.

There are more than 11 million people living in this country without documentation. We would not be able to remove them all even if we wanted to try – and we shouldn’t try. Some of these individuals are young adults brought here as children with no choice of their own in the matter. They are American in every way, except on paper. Others are productive and law-abiding parents of U.S. citizens or legal residents who have lived here for decades.

Allowing these folks who live in our communities to work legally and pay full taxes will be good for both our economy and for our federal budget. In fact, the Council of Economic Advisers estimated that these new Administration initiatives, along with other immigration policies announced in November, would increase our nation’s gross domestic product by \$90 billion over

the next 10 years. These changes would also lead to a decrease in federal deficits by somewhere between \$25 billion and \$60 billion over the next 10 years.

Blocking or repealing the Administration's initiatives would take us backwards. In fact, just last week, the Congressional Budget Office reported that the House bill to block these deferred deportation programs that the Senate declined to take up and consider yesterday would cost our economy \$7.5 billion over ten years.

Estimates indicate that more than 4 million immigrants will be eligible for the temporary deportation relief outlined by the President. While not all of those eligible are expected to apply, many will, and that will allow the Administration to focus its limited enforcement resources on the highest priorities for removal – those who pose security risks or recent arrivals without longstanding ties to our country. That is more than enough work for our border security and immigration enforcement officials to handle – even at the record deportation levels we have seen in recent years.

So, in sum, based on what we know so far, I have come to the conclusion that the initiatives whose implementation we're examining today are feasible, are fair, make good economic sense, and actually enhance our nation's security. Whether you agree with that or not, these initiatives are interim steps. They are not final steps. Those are the ones we need to take by doing the hard work of rebuilding the consensus that allowed two-thirds of the Senate to support compromise immigration reform legislation some two years ago.

As I close, let me thank the Chairman for calling this hearing. While there is considerable disagreement about what the President has done, I hope we can all agree that this hearing is the proper forum to have a debate on immigration policy.

I do not believe we should be threatening to shut down the Department of Homeland Security – an agency vital to our nation's security – over disagreements with the President's policies. All three former Homeland Security secretaries – two of them Republicans, one of them a Democrat – agree with me on that point.

In the next several days, I hope that most of us can come together to do what I believe is the right thing – support the passage of a clean, full-year appropriation for the Department of Homeland Security by February 27th and then get to work to pass a thoughtful, comprehensive immigration reform bill that is worthy of this body in which all of us are privileged to serve.

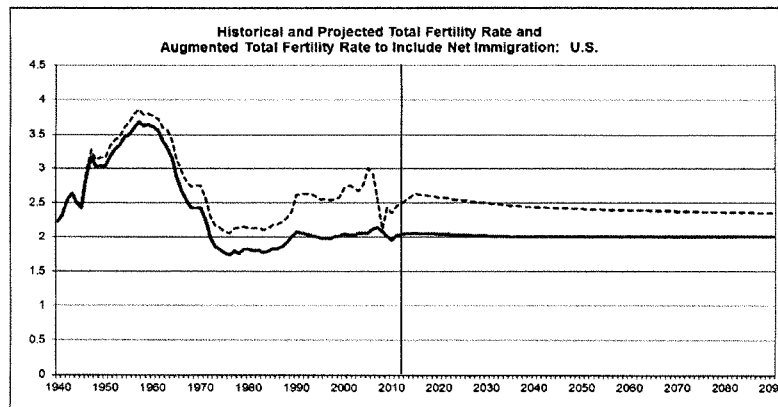
**Testimony to the Senate Committee on Homeland Security and
Governmental Affairs**
**“Financial Implications for the Social Security Trust Funds of the President’s
Executive Actions on Immigration, Announced November 20, 2014”**

Stephen C. Goss, Chief Actuary, Social Security Administration
February 4, 2015

Chairman Johnson, Ranking Member Carper, and members of the committee, thank you very much for the invitation to speak to you today on this very important subject. Immigration is a major factor in the evolution of the United States population. The recently announced executive actions, including an expansion of the 2012 Deferred Action for Childhood Arrivals (DACA) and the new Deferred Action for Parental Accountability (DAPA), will have significant effects on the population, the economy, and the finances of the Social Security Trust Funds.

Background

Immigration has played a fundamental role in the growth and evolution of the U.S. population and will continue to do so in the future. In the 2014 Trustees Report to Congress, we projected that net annual immigration will add about 1 million people annually to our population. With the number of annual births at about 4 million, the net immigration will have a substantial effect on population growth and on the age distribution of the population. Without this net immigration, the effects of the drop in birth rates after 1965 would be much more severe for the finances of Social Security, Medicare, and for retirement plans in general. Because immigrants into the U.S. are generally young, they increase the ratio of working age population to retirement age population in much the same way as do births.



The solid line in the figure above is the total fertility rate, the average number of children that women have in a lifetime. The dashed line adds net immigrants as if they were U.S. births.

The Office of the Chief Actuary developed long-term projections of the U.S. population starting even before enactment of the Social Security Act in 1935. These population projections are fundamental to the assessment of the actuarial status of the Social Security and Medicare Trust Funds. Our population projections are also used for the long-term extensions of estimates in the President's Budget.

In addition to projecting the U.S. population, we also project the level of economic activity and earned income under the assumptions agreed upon by the Social Security and Medicare Boards of Trustees. From these projections, we develop estimates of the future workers who will pay payroll taxes to Social Security, the number of workers who will become insured under the program and then receive benefits, and the programs' cash flows (tax revenue and program costs) and resulting growth in the level of the programs' Trust Fund reserves.

We have developed estimates for the Congress on proposals to alter immigration laws and regulations, and their interpretation, in the context of comprehensive immigration reform. We provided estimates for S. 2611 on June 24, 2006 at the request of Senator Grassley. We provided estimates for S. 1348 and S. 1639 on June 27, 2007 at the request of Senator Kennedy. More recently, we provided estimates at the request of Senator Rubio for S. 744 as introduced on May 8, 2013 and as passed by the Senate on June 28, 2013.

The estimates for the President's recent executive actions that we provided at the request of Chairman Johnson earlier this week illustrate the more limited nature of these actions, compared to previous comprehensive immigration reform bills. These actions provide the opportunity to seek deferred action and legal work authorization for only about one-third of the current undocumented/unauthorized population in the country, and only a very limited increase in the number of individuals who will be able to enter the country as legal permanent residents. The balance of my testimony will provide a summary of the effects estimated by our team in the Office of the Chief Actuary for the November 20, 2014 executive actions. For more detail on these estimates, please refer to my letter to Chairman Johnson dated February 2, 2015.

Financial Implications for the National Economy

We assume that individuals who are in the U.S. without documentation or who have overstayed visas work at the same rate as the rest of the population at any age and gender. Thus, increased employment in the national economy and the increase in GDP are closely related to the increase in the population itself. By 2024, we estimate an increase in the population of 359,000 individuals, with 248,000 additional employed workers, due to the 2014 executive actions. This increase in employed workers yields GDP that is elevated by 0.15 percent. By 2050, as the population ages, we project 408,000 additional employed workers, or less than half of the 922,000 increase in population. In 2050, we project that GDP will be increased by about 0.22 percent due to the 2014 executive actions.

Financial Implications for the Social Security Trust Funds

We estimate that the long term actuarial balance for the combined Old-Age and Survivors Insurance (OASI) and Disability Insurance (DI) Trust Funds will be improved slightly by the 2014 executive actions, reducing the current-law actuarial deficit by 0.01 percent of payroll. The

annual effects on cash flow will depend on the effects on the population. The net annual cash flow (tax income less cost) for the combined trust funds will be increased for 2015 through 2045 (when the individuals granted work status are still at working ages), then reduced for 2046 through 2082 (as the additional legal workers begin to approach benefit eligibility age), and essentially neutral thereafter. On a cumulative basis, however, the net effect on the combined OASI and DI Trust Funds will be a small positive for the next 75 years as a whole.

By 2024, we project that 925,000 additional workers will be paying payroll taxes. This increase comes from the increase in workers in the national economy mentioned above, plus individuals in the informal economy who will enter the formal economy and pay taxes. The number of added workers paying payroll taxes is fairly stable from 2024 through 2050, at around 1 million.

Components of the 2014 Executive Actions for Immigration

The executive actions will affect both (1) the population of legal permanent residents and citizens and (2) the “other than legal permanent resident” population, which includes residents with temporary visas, residents who have overstayed such visas, residents who have never been authorized or documented, and those who have been or will be granted temporary deferred status under DACA or DAPA.

The 2014 executive actions will have two substantial effects on the population of legal permanent residents and citizens in the U.S. First, the actions are expected to grant legal permanent resident status to 10,000 additional entrepreneurs annually starting this year. We estimate that this provision will add 249,000 individuals to our population for 2050, and more in subsequent years. Second, the net increase in population of childbearing age from all provisions in the executive actions will result in more children born here as citizens. Over time, we project the added citizens will rise to 85,000 individuals for 2050 and will continue to grow thereafter.

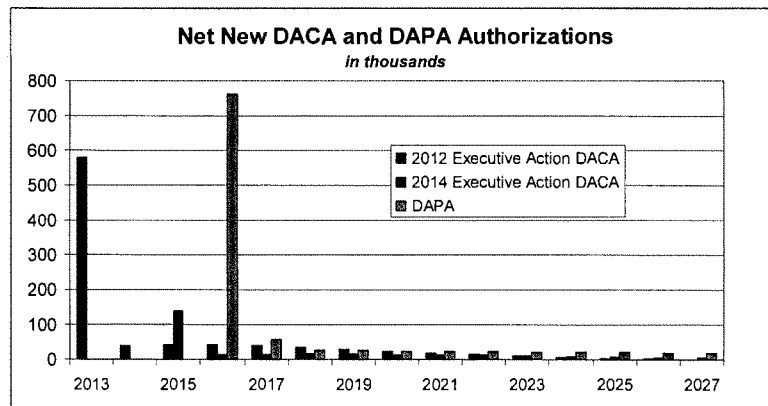
For the current and potential other than legal permanent resident population, the 2014 executive actions will have several important effects, which include the following:

1. Increased border security will reduce the number of individuals who will attempt to and succeed in entering the country without authorization. We project that these measures will decrease the number of undocumented residents by about 1.1 million by 2050.
2. Emphasis on enforcement and removal of undocumented residents in the country will focus more on individuals who pose security and other threats, rather than on individuals who have overstayed visas or entered the country without authorization and have not committed crimes or posed any threat. We project that this reorientation will make visa overstayers and undocumented residents less likely to leave the country, and, as a result, we will have about 1.2 million additional other-than-legal-permanent residents in 2050.
3. Expansion of DACA beyond the 2012 provision makes all children who arrived in the country under age 16 prior to January 1, 2010 eligible for deferred action. We estimate that there will be 234,000 new DACA-authorized individuals by the end of 2024 as a result of the 2014 DACA expansion, in addition to over 700,000 DACA-authorized individuals from the 2012 action. By 2050, we project the DACA-authorized residents will be 267,000 under the new 2013 expansion in addition to the 560,000 under the original 2012 provision.

4. DAPA authorization will affect more individuals than the DACA expansions. We estimate that about 40 percent of the roughly 3.4 million potentially eligible parents will apply and become authorized for DAPA status at some point.
5. Granting extended visas for relatives of legal permanent residents who are awaiting legal permanent resident status and for those receiving *optional practical training* in the fields of science, technology, engineering, and math is expected to increase the number of U.S. residents by about 143,000 in 2024 and thereafter. Currently, some relatives are required to leave their families and the country for several years in order to be able to apply for legal permanent resident status.
6. Undocumented spouses of H-1B visa holders will be allowed to apply for legal work authorization for the duration of their stay. This provision will increase employment but not the population.

The size of the effects of the first two provisions, those largely affecting the numbers of undocumented residents entering or leaving the country, are particularly uncertain. The precise nature of the actions to be taken are not yet well specified. However, because these effects are closely related, we believe that their effects will be largely offsetting as indicated by our estimates.

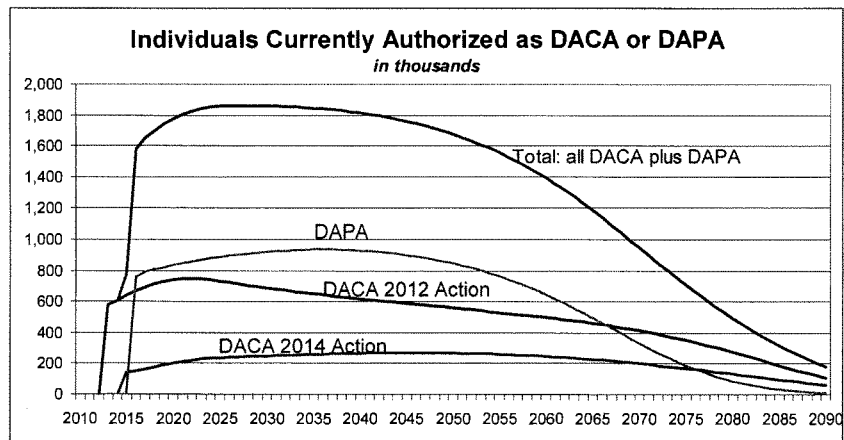
The largest effect of the executive actions for individuals who are currently undocumented or have overstayed a visa is the opportunity to pursue DACA or DAPA status and thereby gain legal work authorization. These individuals will be able to reapply for deferred action every 3 years, as long as they continue to meet the qualifications and do not pose a security threat. The additional individuals entering the formal economy and paying taxes will have positive effects on payroll tax revenue for several decades, followed by decades where these individuals will be past working ages and will receive earned benefits from Social Security.



Based on discussions with DHS, we have assumed that the numbers of individuals applying for and being granted authorization for DACA and DAPA status (1) were large in 2013 for the 2012 DACA action, (2) will be large in 2015 for the 2014 DACA expansion and (3) will be large in

2016 for DAPA. The numbers in the figure above represent the net new approvals for each category. New first time approvals are offset by a small number of individuals who were approved earlier but are not approved on a subsequent reapplication.

The accumulated number or “stock” of individuals who are authorized for each DACA or DAPA status rises abruptly with initial approvals, but then declines over the next few decades as the individuals qualifying gradually age.



As we approach the end of the 75-year projection period, the total number of individuals authorized for DACA and DAPA status diminish, illustrating the temporary effect of granting legal status to a closed group of individuals.

Again, thank you very much for the opportunity to share this information with you. I will be happy to answer any questions you may have.



SOCIAL SECURITY
Office of the Chief Actuary

February 2, 2015

The Honorable Ron Johnson
Chairman, Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Chairman Johnson:

I am writing in response to your request for estimates of the financial effects on Social Security of the President's Executive Actions for immigration announced November 20, 2014. The preliminary estimates and analysis provided in this letter reflect our careful analysis to date of these complex provisions. We received valuable assistance in interpreting these executive actions from Office of Management and Budget (OMB), the Department of Homeland Security (DHS), and the Council of Economic Advisors (CEA). These estimates provide expected numbers of individuals approved under or otherwise affected by the specified actions, the effects on gross domestic product (GDP) and employment in the U.S. economy, the effects on workers covered by Social Security who make payroll tax contributions to the Old-Age and Survivors Insurance (OASI) and the Disability Insurance (DI) Trust Funds, the effects on numbers of OASDI beneficiaries, and the change in OASDI tax income and program cost. We based these estimates on the intermediate assumptions of the 2014 Trustees Report and on information provided by DHS and other sources in December 2014 regarding populations potentially affected and likely timing of implementation. These specifications are evolving and so are subject to possible modification in the future.

The enclosed Table 1 provides our estimates of the change in the 75-year long range OASDI actuarial balance and the annual cost and income rates for the OASDI program (expressed as a percent of the present law taxable payroll), as well as the level of combined OASI and DI Trust Fund reserves expressed as a percent of annual program cost. The 2014 executive actions increase (improve) the OASDI long range actuarial balance by 0.01 percent of taxable payroll. The annual balance (difference between the annual income rate and the annual cost rate) is increased slightly for 2015 through 2045, reduced slightly for 2046 through 2082, and has a negligible effect from 2083 through 2090. While the executive actions do not change the year the combined trust fund reserves would become depleted, the projected depletion would occur later in the year 2033 (by about 3 months) because the reserves at the beginning of the year are increased from 2 percent of annual program cost under the 2014 Trustees Report to 7 percent when we include the 2014 executive actions.

The pattern of increased annual balance (improved net annual cash flow) through 2045, followed by 37 years of reduced annual balance, is the result of the major factors in the executive actions: providing legal work authorization to many younger children and their parents in the current population, who will pay additional taxes for several decades, followed by the period in which they will receive the benefits they have earned based on the taxes paid in their working years.

Enclosed Tables A1, A2, and B provide extensive detail on our projections for the 2014 executive actions. Tables A1 and A2 show projected increases starting in 2015 for the numbers of both (1) legal permanent residents and citizens and (2) the resident population that is other than: legal permanent residents and citizens. Table B provides the separate components of each of these increases in the population. Tables A1 and A2 also show that we project additional revenue from payroll tax and taxation of benefits of about \$35 billion through 2024, with very little additional program cost over the same period. Including the additional interest earned by the trust funds (not shown in these tables), the projected increase in the combined OASI and DI Trust Fund reserves through the end of 2024 is estimated to be about \$41 billion. A fuller description of the projected effects on the population, the economy, and OASDI program cash flows shown in these tables is provided below.

The estimates presented reflect extensive efforts in modeling and modifying the present-law baseline estimates issued 2014 Trustees Report long-range projections, under the direction of Deputy Chief Actuary Alice Wade. New population projections were developed by Michael Morris, Tiffany Bosley, Mark Bye, Felicitie Bell, and Danielle Huston. New economic and revenue projections were developed by Bob Weathers, Pat Skirvin, Sven Sinclair, Drew Sawyer, Mike Miller, Tony Cheng, Karen Smith, and Bill Piet. New beneficiary, benefit, and trust fund operation estimates were developed by Jason Schultz, Rob Baldwin, Katie Sutton, Johanna Maleh, Christopher Chaplain, Dan Nickerson, Michael Clingman, Sharon Chu, and Kyle Burkhalter.

Executive Actions Effects on U.S. Resident Population

- 1) **Enhance border security.** We estimate that changes based on this provision will reduce the number of individuals entering the country without documentation by about 50,000 per year starting in 2016. The reduction in the resident population that is undocumented due to this provision is estimated to reach 1.1 million by 2050. See Table B, column (5).
- 2) **Focus efforts more heavily on identifying and deporting undocumented residents who represent threats to national security, border security, and public safety.** We estimate that this change in priorities will initially reduce by about 30,000 per year emigration by individuals who have entered the country without documentation, or have overstayed a temporary visa. This reduction in emigration rate for undocumented residents is assumed to increase somewhat after about 10 years based on a growing understanding of the changes in prioritization under these actions. The resulting increase in the resident population due to this provision is estimated to reach nearly 1.2 million by 2050. See Table B, column (4).

- 3) **Expand the Deferred Action for Childhood Arrivals (DACA) executive action of 2012 by** (a) extending the date of entry requirement (date prior to which entry into the country under age 16 is required) from June 15, 2007 to January 1, 2010, making such individuals eligible regardless of their current age, and (b) extending the DACA renewal authorization from 2 to 3 years.
- The estimated numbers of residents with approval under the 2012 DACA action for years 2013 and later are shown in Table B, column (9). The net approvals for each year (new approvals less those not obtaining reauthorization) are shown in Table B, column (12).
 - The estimated numbers of additional residents with approval under the 2014 DACA executive action for years 2015 and later are shown in Table B, column (10). In column (13) we show the additional net approvals based on the 2014 DACA executive action. We assume that individuals in DACA status will be able to periodically apply to extend their status, even indefinitely, but that DACA status is not a “path to citizenship.”
 - We assume that a small number of individuals will newly apply for this status each year after 2015, for many years into the future, and that this will be partly offset by a small number of individuals who will not have their DACA status renewed based on security, and other, considerations. We estimate that the 2014 DACA extension will increase the number of residents with current DACA status by 267,000 for 2050, and that this number will diminish thereafter as they age. See Table B, column (10).
 - We estimate that the DACA changes in the 2014 executive actions will result in reduced emigration for those qualifying, increasing the resident population by nearly 100,000 by 2050, but declining thereafter as this group ages. See Table B, column (7).
- 4) **Establish the Deferred Action for Parental Accountability (DAPA) program** to allow legal work authorization for parents who (a) have a child that is a citizen or a legal permanent resident and (b) have been present in the country since January 1, 2010. Like DACA, this temporary authorization will be potentially renewable indefinitely. We estimate that roughly 1.4 million of those currently eligible to apply for DAPA will apply in 2015 or later and will be approved in 2016 or later. The total number of residents with approved DAPA status in the population is projected to rise to 935,000 for 2035 and to decline thereafter as they age. See Table B, column (11). We estimate that this provision will result in reduced emigration for approved individuals, increasing the resident population by 282,000 for 2050, but declining thereafter as this group ages. See Table B, column (6).
- 5) **Allow an additional 10,000 entrepreneurs to enter the country annually as legal permanent residents.** The number of additional U.S. residents admitted under this provision, net of subsequent emigration from this group, is projected to reach 249,000 in 2050 and to rise gradually thereafter. See Table B, column (1).
- 6) **Allow undocumented spouses of H-1B visa holders to apply for legal work authorization.** This provision is expected to increase the number of workers in the economy, and the number who pay taxes, but not to significantly affect the size of the resident population.

- 7) **Allow extended stay for some nonimmigrant visa holders.** Affected nonimmigrants include those who are relatives of legal permanent residents and are waiting to apply for legal permanent resident status, and those who are receiving *optional practical training* in the fields of science, technology, engineering, and mathematics (STEM). This provision is estimated to increase the total resident population by about 143,000 for 2024 and thereafter. See Table B, column (3).
- 8) **Additional births.** With a net increase in resident population at childbearing ages based on the provisions described above, we estimate a further increase in population due to additional births in the U.S., reaching 85,000 by 2050 and increasing thereafter. See Table B, column (2).

Overall, we estimate that the effect of the provisions of the 2014 executive actions will increase the total resident population by about 900,000 persons for 2050 and thereafter. See Table B, column (8).

Executive Actions Effects on the General U.S. Economy and Social Security

Total employment in the U.S. economy is projected to increase by 248,000 for 2024 and by over 400,000 for 2050. As a result, total GDP is projected to increase by \$43 billion for 2024, an increase of 0.15 percent over the projected GDP in the absence of the 2014 executive actions. For years 2040 through 2045, GDP is projected to be elevated by 0.23 percent. Thereafter, the increase in GDP due to the 2014 executive actions declines as the large number of DACA and DAPA workers age. See Tables A1 and A2, columns (4) and (5).

Workers covered under Social Security and making payroll tax contributions are projected to increase by 925,000, or by 0.51 percent for 2024, rising to 0.57 percent for 2035. Thereafter, the increase in covered workers paying taxes due to the executive actions declines as the large number of DACA and DAPA workers age. See Tables A1 and A2, column (6).


The additional OASDI covered workers described above are projected to increase payroll tax revenue by 0.42 percent, or by \$5.4 billion, for 2024. The 2014 executive actions are projected to increase OASDI payroll tax revenue by 0.49 percent for 2035, with smaller increases thereafter. See Tables A1 and A2, column (8).

The increase in OASDI covered workers starting in 2015 due to the executive actions will also result in additional individuals gaining insured status for benefits from Social Security. For 2024, we estimate that the additional number of individuals receiving a benefit from Social Security as a result of the 2014 executive actions will be just 16,000, increasing the total number of beneficiaries by 0.02 percent. By 2050, we project the increase in beneficiaries due to the executive actions will rise to about 0.76 percent, and will decline thereafter as the affected populations age. See Tables A1 and A2, column (7). The change in OASDI cost is estimated to be negligible for 2024. However, the increase in overall program cost is projected to reach 0.50 percent for 2055, and to decrease thereafter. See Tables A1 and A2, column (10).

The increase in OASDI benefits paid as a result of the 2014 executive actions will increase the amount of revenue from taxing benefits that is deposited in the Trust Funds by a similar percentage. See Tables A1 and A2, column (9).

We hope these estimates will be helpful. Please let me know if we may provide further assistance.

Sincerely,

A handwritten signature in black ink, reading "Stephen C. Goss". The signature is written in a cursive style with a large, stylized 'S' and 'G'.

Stephen C. Goss
Chief Actuary

Enclosures

Table 1 - OASDI Cost Rate, Income Rate, Annual Balance, and Trust Fund Ratio

Effect of 2014 Executive Actions for Immigration announced November 20, 2014.

Year	Proposal				Change from Present Law			
	Expressed as a percentage of present-law taxable payroll			Trust Fund Ratio	Expressed as a percentage of present-law taxable payroll			Trust Fund Ratio
	Cost Rate	Income Rate	Annual Balance		Cost Rate	Income Rate	Annual Balance	
2014	13.95	12.67	-1.29	320	0.00	0.00	0.00	0.00
2015	13.97	12.62	-1.05	306	0.00	0.00	0.00	0.00
2016	13.97	12.91	-1.05	292	0.00	0.02	0.02	0.02
2017	13.97	12.95	-1.02	277	0.00	0.04	0.04	0.04
2018	14.02	12.98	-1.04	263	0.00	0.04	0.04	0.04
2019	14.15	12.99	-1.16	249	0.00	0.04	0.04	0.04
2020	14.33	13.01	-1.32	234	0.00	0.05	0.05	0.05
2021	14.50	13.03	-1.47	220	0.00	0.05	0.05	0.05
2022	14.74	13.06	-1.68	205	0.00	0.05	0.05	0.05
2023	15.00	13.08	-1.92	189	0.00	0.05	0.05	0.05
2024	15.28	13.10	-2.17	173	0.00	0.05	0.05	0.05
2025	15.54	13.12	-2.42	157	0.00	0.05	0.05	0.05
2026	15.79	13.14	-2.65	140	0.00	0.05	0.05	0.05
2027	16.03	13.16	-2.87	122	0.00	0.06	0.06	0.06
2028	16.25	13.18	-3.07	105	0.00	0.06	0.06	0.06
2029	16.44	13.19	-3.25	87	0.00	0.06	0.06	0.06
2030	16.61	13.21	-3.40	68	0.00	0.06	0.06	0.06
2031	16.75	13.22	-3.53	48	0.00	0.06	0.06	0.06
2032	16.87	13.23	-3.64	28	0.01	0.06	0.06	0.06
2033	16.96	13.23	-3.73	7	0.01	0.06	0.05	0.05
2034	17.04	13.24	-3.80	----	0.01	0.06	0.05	0.05
2035	17.10	13.25	-3.85	----	0.01	0.06	0.05	0.05
2036	17.14	13.25	-3.89	----	0.01	0.06	0.05	0.05
2037	17.16	13.25	-3.90	----	0.02	0.06	0.04	0.04
2038	17.15	13.26	-3.90	----	0.02	0.06	0.04	0.04
2039	17.14	13.26	-3.88	----	0.02	0.06	0.04	0.04
2040	17.11	13.26	-3.86	----	0.03	0.06	0.03	0.03
2041	17.08	13.26	-3.82	----	0.03	0.06	0.03	0.03
2042	17.05	13.26	-3.79	----	0.04	0.06	0.02	0.02
2043	17.02	13.25	-3.77	----	0.04	0.06	0.01	0.01
2044	17.01	13.25	-3.75	----	0.05	0.06	0.01	0.01
2045	17.00	13.25	-3.74	----	0.06	0.06	0.00	0.00
2046	16.99	13.25	-3.74	----	0.06	0.06	-0.01	-0.01
2047	16.98	13.25	-3.73	----	0.07	0.05	-0.01	-0.01
2048	16.98	13.25	-3.72	----	0.07	0.05	-0.02	-0.02
2049	16.97	13.25	-3.72	----	0.08	0.05	-0.02	-0.02
2050	16.97	13.25	-3.72	----	0.08	0.05	-0.03	-0.03
2051	16.98	13.25	-3.72	----	0.08	0.05	-0.03	-0.03
2052	17.00	13.25	-3.74	----	0.08	0.05	-0.03	-0.03
2053	17.02	13.26	-3.77	----	0.08	0.05	-0.04	-0.04
2054	17.06	13.26	-3.80	----	0.09	0.05	-0.04	-0.04
2055	17.10	13.26	-3.84	----	0.09	0.05	-0.04	-0.04
2056	17.15	13.26	-3.88	----	0.09	0.05	-0.04	-0.04
2057	17.20	13.27	-3.93	----	0.08	0.05	-0.04	-0.04
2058	17.24	13.27	-3.98	----	0.08	0.05	-0.04	-0.04
2059	17.29	13.27	-4.02	----	0.08	0.04	-0.04	-0.04
2060	17.34	13.27	-4.07	----	0.08	0.04	-0.04	-0.04
2061	17.39	13.28	-4.11	----	0.08	0.04	-0.04	-0.04
2062	17.43	13.28	-4.15	----	0.08	0.04	-0.04	-0.04
2063	17.48	13.29	-4.20	----	0.08	0.04	-0.04	-0.04
2064	17.52	13.28	-4.24	----	0.08	0.04	-0.04	-0.04
2065	17.57	13.29	-4.28	----	0.07	0.04	-0.03	-0.03
2066	17.62	13.29	-4.33	----	0.07	0.04	-0.03	-0.03
2067	17.67	13.29	-4.38	----	0.07	0.04	-0.03	-0.03
2068	17.71	13.29	-4.42	----	0.07	0.04	-0.03	-0.03
2069	17.76	13.30	-4.46	----	0.07	0.04	-0.03	-0.03
2070	17.80	13.30	-4.50	----	0.06	0.04	-0.03	-0.03
2071	17.84	13.30	-4.54	----	0.06	0.04	-0.02	-0.02
2072	17.88	13.30	-4.57	----	0.06	0.04	-0.02	-0.02
2073	17.90	13.30	-4.60	----	0.06	0.04	-0.02	-0.02
2074	17.92	13.31	-4.61	----	0.05	0.04	-0.02	-0.02
2075	17.93	13.31	-4.63	----	0.05	0.03	-0.02	-0.02
2076	17.94	13.31	-4.63	----	0.05	0.03	-0.01	-0.01
2077	17.94	13.31	-4.63	----	0.05	0.03	-0.01	-0.01
2078	17.94	13.31	-4.63	----	0.04	0.03	-0.01	-0.01
2079	17.94	13.31	-4.63	----	0.04	0.03	-0.01	-0.01
2080	17.94	13.31	-4.64	----	0.04	0.03	-0.01	-0.01
2081	17.95	13.31	-4.65	----	0.04	0.03	-0.01	-0.01
2082	17.97	13.31	-4.67	----	0.04	0.03	-0.01	-0.01
2083	18.00	13.31	-4.69	----	0.04	0.03	0.00	0.00
2084	18.04	13.31	-4.73	----	0.04	0.03	0.00	0.00
2085	18.08	13.31	-4.77	----	0.04	0.03	0.00	0.00
2086	18.12	13.31	-4.81	----	0.03	0.03	0.00	0.00
2087	18.17	13.32	-4.86	----	0.03	0.03	0.00	0.00
2088	18.22	13.32	-4.90	----	0.03	0.03	0.00	0.00
2089	18.28	13.32	-4.95	----	0.03	0.03	0.00	0.00

Summarized Rates: OASDI

	Cost Rate	Income Rate	Actuarial Balance	Year of reserve depletion ¹
2014 - 2088	16.81%	13.94%	-2.87%	2033

Based on Intermediate Assumptions of the 2014 Trustees Report
¹ Under present law the year of Trust Fund reserve depletion is 2033

Summarized Rates: OASDI

	Change in Cost rate	Change in Income Rate	Change in Actuarial Balance
	0.04%	0.05%	0.01%

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Table A1: Changes Due to 2014 Executive Actions, Changes from Estimates under the Intermediate Assumptions of the 2014 Trustees Report

Table A1.1: Change 2015-24 in 2024 Actuals, Retrospective Changes from Estimates, and the Intermediate Assumptions of the Cost Projections Report										
	U.S. Resident Population at End of Year (in thousands)			U.S. Employment and GDP		OASDI Covered Workers and Beneficiaries (in thousands)		Annual OASDI Tax Income and Cost (in billions of \$)		
Calendar Year	Legal Permanent Residents and Citizens (1)	Other Than: Legal Permanent Residents and Citizens (2)	Total (3)	U.S. Employment average weekly (in thousands) (4)	Nominal GDP (in billions of \$) (5)	Covered Workers-- at any time during the year (6)	Beneficiaries at End of Year (7)	Payroll Tax Revenue (8)	Revenue from Taxation of Benefits (9)	Cost (10)
2015	9	96	105	35	4	58	0	0.2	0.0	0.0
2016	19	130	149	90	11	394	0	1.6	0.0	0.0
2017	30	152	183	124	16	693	1	3.0	0.0	0.0
2018	42	165	207	146	20	730	2	3.4	0.0	0.0
2019	53	176	229	164	23	762	3	3.3	0.0	0.0
2020	65	189	254	181	27	803	5	4.0	0.0	0.0
2021	76	203	279	198	30	837	6	4.4	0.0	0.0
2022	87	218	306	216	34	870	9	4.3	0.0	0.0
2023	99	234	332	232	38	898	12	5.0	0.0	0.0
2024	110	249	359	248	43	925	16	5.4	0.0	0.0
Total Dollar Change for 2015-24:										
2025	121	265	386	265	247	951	20	34.7	0.0	0.1
2030	172	346	518	335		1,041	92			
2035	217	422	639	385		1,088	201			
2040	257	491	748	414		1,090	367			
2045	295	547	842	418		1,043	575			
2050	334	588	922	408		970	690			
2055	372	609	981	395		891	695			
2060	407	603	1,009	381		822	637			
2065	436	569	1,005	371		767	550			
2070	460	515	976	365		728	447			
2075	482	460	943	364		701	349			
2080	502	419	920	363		684	276			
2085	519	392	911	361		674	230			
2090	531	377	908	358		665	209			

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Table A2: Percent Changes Due to 2014 Executive Actions, Changes from Estimates under the Intermediate Assumptions of the 2014 Trustees Report

Calendar Year	U.S. Resident Population at End of Year			U.S. Employment and GDP		OASDI Covered Workers and Beneficiaries		Annual OASDI Tax Income and Cost		
	Percent Change			Percent Change		Percent Change		Percent Change		
	Legal Permanent Residents and Citizens (1)	Other Than: Legal Permanent Residents and Citizens (2)	Total (3)	Total U.S. Employment (4)	GDP (5)	Workers at Any Time During the Year (6)	Beneficiaries at End of Year (7)	Payroll Tax Revenue (8)	Revenue from Taxation of Benefits (9)	Cost (10)
2015	0.00	0.66	0.03	0.02	0.02	0.03	0.00	0.03	0.00	0.00
2016	0.01	0.86	0.05	0.06	0.06	0.23	0.00	0.19	0.00	0.00
2017	0.01	0.97	0.05	0.08	0.08	0.40	0.00	0.33	0.01	0.00
2018	0.01	1.01	0.06	0.09	0.09	0.42	0.00	0.35	0.00	0.00
2019	0.02	1.04	0.07	0.11	0.10	0.43	0.00	0.33	0.00	0.00
2020	0.02	1.08	0.07	0.12	0.11	0.45	0.01	0.38	0.00	0.00
2021	0.02	1.13	0.08	0.12	0.12	0.47	0.01	0.39	0.00	0.00
2022	0.03	1.18	0.09	0.14	0.13	0.48	0.01	0.37	0.00	0.00
2023	0.03	1.24	0.09	0.14	0.14	0.49	0.01	0.41	0.00	0.00
2024	0.03	1.30	0.10	0.15	0.15	0.51	0.02	0.42	0.00	0.00
2025	0.04	1.36	0.11	0.16	0.16	0.52	0.02	0.43	0.00	0.00
2030	0.05	1.64	0.14	0.20	0.20	0.56	0.10	0.47	0.01	0.02
2035	0.06	1.89	0.17	0.23	0.22	0.57	0.22	0.49	0.05	0.06
2040	0.07	2.09	0.19	0.24	0.23	0.56	0.41	0.47	0.13	0.15
2045	0.08	2.25	0.21	0.23	0.23	0.52	0.64	0.43	0.32	0.33
2050	0.09	2.34	0.22	0.22	0.22	0.47	0.76	0.39	0.49	0.47
2055	0.09	2.36	0.23	0.21	0.21	0.42	0.76	0.35	0.53	0.50
2060	0.10	2.30	0.23	0.20	0.20	0.38	0.69	0.32	0.50	0.47
2065	0.11	2.14	0.23	0.19	0.19	0.35	0.60	0.29	0.45	0.43
2070	0.11	1.92	0.22	0.18	0.18	0.32	0.48	0.27	0.38	0.36
2075	0.11	1.70	0.20	0.18	0.18	0.30	0.38	0.26	0.30	0.29
2080	0.11	1.54	0.20	0.17	0.17	0.29	0.30	0.25	0.24	0.23
2085	0.11	1.43	0.19	0.17	0.17	0.28	0.25	0.24	0.20	0.20
2090	0.11	1.37	0.19	0.16	0.16	0.27	0.23	0.23	0.19	0.18

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Table B: Demographic Changes Due to 2012 and 2014 Executive Actions, Changes from Estimates under the Intermediate Assumptions of the 2014 Trustees Report														
Calendar Year	Change in U.S. Resident Population Due to 2014 Executive Actions, at End of Year (in thousands)							Deferred Action Stocks at End of Year Numbers Approved in the Status (in thousands)		Deferred Action Net Approvals ^{1/} During Year (in thousands)				
	Legal Permanent Residents and Citizens							Deferred Action Stocks at End of Year Numbers Approved in the Status (in thousands)		Deferred Action Net Approvals ^{1/} During Year (in thousands)				
	Other Than Legal Permanent Residents and Citizens							Deferred Action Stocks at End of Year Numbers Approved in the Status (in thousands)		Deferred Action Net Approvals ^{1/} During Year (in thousands)				
	Increase for Additional U.S. Entrepreneurs Allowed under Executive Actions	Increase for Additional U.S. Entrepreneurs Resulting from the Executive Actions	Increase for Additional Stay for Additional Nonimmigrant Visaes	Increase for Unauthorized Overstays of Visaes	Change for Increased Border Security Actions	Effect of Reduced Emigration for those Approved under the DACA	Effect of Reduced Emigration for those Approved under the DACA	Total	2012 Executive Action DACA	Additional in DACA-Approved Stocks Due to 2014 Executive Actions	Number with DACA Approval Due to 2014 Executive Actions	2012 Executive Action Net Approvals	Additional DACA Net Approvals Due to 2014 Executive Actions	Net DACA Approvals Due to 2014 Executive Actions
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
2013	0	0	0	0	0	0	0	0	579	0	0	579	0	0
2014	0	0	0	0	0	0	0	0	608	0	0	39	0	0
2015	8	1	12	27	0	49	8	105	638	139	0	41	139	0
2016	15	4	25	53	(50)	89	13	149	668	151	761	42	13	761
2017	21	8	39	80	(98)	115	17	183	694	163	794	38	14	55
2018	30	11	52	107	(145)	130	21	207	715	176	808	33	15	26
2019	38	15	67	134	(191)	142	25	229	731	189	822	29	15	25
2020	45	20	82	160	(235)	153	29	254	742	200	835	24	14	24
2021	52	24	97	188	(277)	163	33	279	748	211	848	18	13	23
2022	60	28	113	215	(319)	173	37	306	749	220	859	14	12	22
2023	67	32	128	242	(359)	182	41	332	747	228	870	10	10	21
2024	74	35	143	268	(398)	191	46	359	740	234	879	5	9	20
2025	82	39	143	310	(436)	199	50	386	732	238	888	3	7	20
2026	118	54	143	509	(609)	225	68	518	688	249	922	1	5	16
2027	153	64	143	697	(760)	263	80	639	651	259	935	0	4	14
2028	186	71	143	870	(891)	281	88	748	618	266	929	0	4	11
2029	218	77	143	1,030	(1,007)	288	94	842	589	269	902	0	3	9
2030	249	85	143	1,176	(1,110)	282	97	922	560	267	848	0	3	7
2031	277	95	143	1,307	(1,201)	263	97	981	530	260	764	0	2	6
2032	304	103	143	1,417	(1,282)	230	95	1,009	499	247	646	0	2	4
2033	327	109	143	1,506	(1,352)	183	90	1,005	462	227	496	0	1	3
2034	348	113	143	1,576	(1,412)	128	81	976	415	201	332	0	1	2
2035	366	116	143	1,633	(1,462)	76	70	943	352	168	186	0	1	1
2036	381	119	143	1,681	(1,501)	48	58	910	274	133	86	0	1	0
2037	394	121	143	1,721	(1,531)	24	44	876	215	105	53	0	0	0
2038	407	124	143	1,754	(1,553)	5	29	848	168	81	30	0	0	0
2039	422	130	143	1,782	(1,553)	5	29	848	168	81	30	0	0	0

^{1/} The number of net approvals for DACA or DAPA during a year equal the number of individuals newly approved (for the first time) during the year, less the number who were previously approved, required reapproval in the current year, and failed to be approved. This excludes prior approvals who die or emigrate during the year.

Testimony of

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Before the Senate Committee on Homeland Security and Governmental Affairs

Hearing on Deferred Action on Immigration: Implications and Unanswered Questions

February 4, 2015

Mr. Chairman, Ranking Member, Members of the Committee: thank you for inviting me.

I speak on my own behalf as a private citizen and not on behalf of my firm or partners or clients. I hope to bring to you some of the understanding I have gained during my decades of working with tax administration and enforcement from both within and without the government. This experience includes the six years – 2001~2007 – I was privileged to lead the honorable and dedicated men and women of the Tax Division of the United States Department of Justice.

You have called this hearing to examine the logistical, financial, and national security implications of the President's Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parental Accountability (DAPA) programs. I will address the likely consequences of those programs to federal tax administration and enforcement.

The Internal Revenue Service is charged with administering and enforcing the internal revenue laws. When enforcing the tax laws requires the involvement of a court other than the United States Tax Court, the 300 plus trial and appellate attorneys of the civil trial and criminal enforcement sections of the Justice Department's Tax Division represent the interests of the United States.

As required by the Inspector General Act, the Department of the Treasury has an Office of Inspector General, established in 1989. And, in accordance with the Internal Revenue Service Restructuring and Reform Act of 1998, Treasury also has another Inspector General, specifically authorized and obligated by law to provide independent oversight of Internal Revenue Service (IRS) activities. The office of the Treasury Inspector General for Tax Administration, most commonly called by its initials, TIGTA, is the one to which I will refer throughout as "Inspector General."

To describe the impact on tax administration and enforcement of the President's "executive actions" on immigration, we need to look at two phenomena: the Individual Tax Identification Number (ITIN), and "refundable credits."

ITIN

Non-U.S. persons with U.S.-related income are subject to the income tax, but are not eligible for social security numbers. In 1996, the IRS created the Individual Taxpayer Identification Number (ITIN) to enable it to track the tax payments and tax returns of people without social security numbers. And it began issuing these numbers to people in the United States illegally. This, together with "refundable credits," has been a gift to criminals intent on raiding the Federal Treasury.

In 1999, the Inspector General issued its first report on IRS's implementation of ITINs. According to the Report, although IRS developed ITINs to facilitate its processing of the tax returns of non-resident aliens who had U.S.-related income, IRS was issuing them to aliens unlawfully resident in the U.S. The report expressed serious concern about the conflict this created with the obligation of the government to enforce the immigration laws. The Report also highlighted what it referred to as revenue protection issues, noting that "providing illegal aliens with valid TINs . . . increases the potential for fraud." According to the Report, more than 340,000 ITIN applicants had identified themselves as illegal aliens. For the 1997 tax year 180,662 tax returns were filed using ITINs. By the end of 2003, IRS had issued more than 7 million ITINs. It receives about 2 million new applications for ITINs every year, and issues almost all of them, notwithstanding fraudulent documentation, but more on that later.

"Refundable credits"

The primary source of revenues that fund the operations of our federal government is the income tax. It could be very simple, and, in principle, it is. Everything is taxable and nothing is deductible unless otherwise specified. Everything that is taxable is taxable now and everything that is deductible is deductible later, unless otherwise specified. Having determined your net taxable income (income minus allowable deductions), and applied the appropriate tax rate to reach your tax liability, you then apply any credits for which you are eligible.

Let's pause for a moment to consider that "credit" and "refund" in the income tax context are often misnomers. When your liability is \$100 and you have already paid \$60 of it, you have a \$60 credit, so only still owe \$40. If you had already paid \$110, you would have a credit of \$110, and be owed a refund of \$10. But the earned income credit, or earned income tax credit, called in our initial- and acronym-happy tax world, the EITC, is a new creature invented by Congress: a "refundable credit." It does not represent an amount paid in, and it can do more than wipe out your liability. It can create a "refund" of an amount you never paid as income taxes. So you can have a liability before the credit of \$400, have paid in nothing, and, with a refundable earned income tax credit of \$1,000, get a check from Uncle Sam for \$600. The same is true of the additional child tax credit (ACTC).

IRS Policy

For more than two decades, various government watchdogs have been warning IRS and Congress that refundable credits were the vehicles for massive fraud against the Federal Treasury. Early on, it was the General Accounting Office, reporting to Senator Roth in 1994 that IRS was sending checks to illegal aliens in payment of the earned income credit. Congress addressed this shortly thereafter by making a social security number a requirement of receiving the credit. That has not stopped IRS from paying it, though. And Congress did not institute the same requirement when a few years later, it enacted the additional child tax credit. So IRS makes no effort to avoid paying the ACTC to unlawful immigrants.

The law makes a social security number a requirement of eligibility to receive the earned income credit. But in 1999, the Chief Counsel's office of IRS ruled (in a non-binding, non-precedential way, but no one but the IRS pays attention to those disclaimers) that when a person receives a social security number, he can file amended returns to claim the credit for the three preceding years during which he did not. The logic is puzzling: the credit is not available if you don't have a social security number, but you can receive it retroactively for years during which you did not qualify for it because you didn't have a social security number.

Economists estimating the impact on the Federal Treasury of the "executive action" need to keep in mind that IRS will be paying three prior years' worth of refundable credits to anyone who applies for them.

They will also want to consider that, in its budget request for 2014, the IRS asked for 440 million dollars to implement the Affordable Care Act, including 306 million dollars for information technology changes required to deliver the associated tax credits. Remember, the Affordable Care Act instituted a credit that is not only refundable, but also transferrable. The person receiving it can designate to whom the IRS should pay it, generally his insurance carrier.

The Tax Gap

There is from time to time, on Capitol Hill and elsewhere in government and in newsrooms, much handwringing about the tax gap, last estimated to be 385 billion dollars per year. The tax gap is the difference between the taxes the IRS should have collected and the amount it did. Note, however, that tax gap computations do not take into account money paid out of the Treasury on fraudulent refund claims. And, as we have seen, the fraud against the Treasury using ITINs and refundable credits amounts to hundreds of billions of dollars.

Refundable credits have given rise to a cottage industry – no the big business – of fraud on the Federal Treasury. Unscrupulous tax return preparers create false Forms W-2, or alter real ones, to create enough income to qualify the person – real or imagined – for the credits. Then they file returns claiming the refunds and take a share – or divert

them altogether. Criminals file thousands of ITIN applications, and then thousands of tax returns claiming fraudulent refunds, and, as you will see in the nutshell summaries of Inspector General Reports, the Treasury pays them.

When I was head of the Justice Department's Tax Division, we shut down quite a few fraudulent return preparation operations, and the effort continues. But after-the-fact law enforcement cannot redress these crimes or recover the lost billions. The money should not be paid out of the Federal Treasury in the first place. And it is the responsibility of the Internal Revenue Service to see that it is not. But it invariably and repeatedly fails to do so.

Oath

Every state or federal employee or lawmaker swears an oath of allegiance to the Constitution of the United States of America. Article VI, Clause 3, of the Constitution requires as much. And the requirement is codified in 5 USC §3331, which provides the language of the oath.

The allegiance every government employee swears is to the Constitution, not to any person or office. Perhaps it was with their oaths in mind that, in the Spring of 2012, eleven current and former IRS employees responsible for processing ITIN applications contacted WTHR Eyewitness News in Indianapolis to report that their supervisors were requiring them to simply approve even the most suspect applications, thus creating a "massive loophole for illegal immigrants."

Apparently some of these troubled IRS employees also wrote to Congress. At the request of members of Congress, the Inspector General investigated the allegations, and determined them to be well-founded. In a July 2012 report, the Inspector General identified numerous deficiencies in IRS procedures for processing of ITIN applications, leaving the door open for widespread fraud.

This was not the first time rampant ITIN-enabled raids on the Federal Treasury had been investigated. In 2002, IRS itself established a task force to review the problem and recommend ways to stem the tide. In July 2011, the Inspector General reported that in the previous year, Treasury had paid 4.2 billion dollars in refundable credits to people not authorized to work in the United States.

Inspector General Reports

Let's take a quick look at some of the Inspector General's reports over the years, along with a couple of other relevant items:

In 2004, the General Accounting Office reported that ITINs could easily be obtained using bogus documents and used for illegal purposes.

In 2009, the Inspector General reported an increase in the use of ITINs from 530,000 in 2001 to more than 1.8 million in 2007. The report highlights also note that for 2007, "1.2 million ITIN filers received Additional Child Tax Credits of **1.8 billion dollars**," and recommended that Congress pass legislation requiring a person claiming the ACTC to have a social security number. For 2000 to 2007 inclusive, ACTC totaling nearly 5.25 billion dollars had been paid on ITIN returns, likely with little or no verification of eligibility – i.e., the existence or U.S. residence of a qualifying child - even assuming unlawful immigrants are not ineligible.

From another 2009 report of the Inspector General, "Individual Taxpayer Identification Numbers Are Being Issued Without Sufficient Documentation" we learn that tens of thousands of ITINs had been used multiple times in the same year, resulting in hundreds of millions of dollars in refunds paid. In 2008, more than 72,000 ITINs were used on multiple tax returns that resulted in the payment of **176 million dollars** in refunds.

In 2011, the Inspector General reported that individuals not authorized to work in the United States were paid **4.2 billion dollars** in refundable credits in 2010 alone. IRS did not agree to TIGTA's recommendation that it require additional documentation to support claims of child tax credits, notwithstanding that, for 91% of ITIN returns claiming ACTC, an examination resulted in an adjustment. But the refunds had already been issued. Additional child tax credits totaling nearly **14.25 billion dollars** were paid to illegal aliens in 2008, 2009, and 2010. IRS does not agree that this credit is not available to unlawful immigrants, and takes no steps to confirm that the child about whom the credit is claimed exists at all, or lives in the ITIN filer's household and not in another country.

Drawing upon data in several Inspector General Reports, the Center for Immigration Studies concluded in 2011 that for the six years 2005 – 2010, inclusive, illegal immigrants collected about **7.3 billion dollars** more from the Federal Treasury than they contributed to it.

Perhaps the most damaging of all the studies of IRS's handling of ITINs and tax returns filed using them is the Inspector General's July 2012 report, entitled, and concluding, with the understatement typical of the TIGTA, that "Substantial Changes Are Needed To The Individual Taxpayer Identification Number Program To Detect Fraudulent Applications." The Report concludes that IRS does not have controls over the issuance of ITINs sufficient to prevent or deter fraud. According to the Report: "In Processing Year 2011, the IRS processed more than 2.9 million ITIN tax returns resulting in tax refunds of **6.8 billion dollars**." The report had been undertaken at the request of members of Congress, who forwarded complaints they had received from IRS employees. The employees complained that their supervisors pressured them not to carefully consider ITIN applications, but rather just to issue as many ITINs as possible as fast as possible. The Inspector General's audit confirmed the veracity of these complaints. It discovered that IRS approved tens of thousands of ITIN applications submitted using the same address. TIGTA found 154 addresses across the U.S. for

which more than 1,000 ITINs had been issued. In 2011, IRS sent 24,000 refunds totaling **46 million dollars** to a single address in Atlanta. It paid more than **9 million dollars** in refunds to filers of nearly 3,600 refund claims from 7 addresses. Among the charts in the Report is one showing the 10 addresses most commonly used for ITIN tax refunds. For 2011, these 10 addresses accounted for

- nearly 54,000 ITIN returns claiming refunds,
- totaling more than **86 million dollars** THAT WERE ISSUED.

TIGTA found that, notwithstanding that IRS had rejected prior ITIN applications using certain addresses, it approved dozens, and in one case more than 600, ITIN applications from five addresses, and issued 739 refunds totaling **1.8 million dollars** to those addresses. TIGTA's research also confirmed that ITINs were being used for purposes other than tax reporting. It found them listed in property and vehicle ownership records and in traffic violations histories.

Later that year, then Deputy Commissioner Steve Miller responded to Rep. Boustany's inquiry following up on the Inspector General's July report about ITINs, saying steps were being taken to address the deficiencies.

In 2013, the Inspector General reported that the IRS had not complied with an Executive Order to reduce improper payments. The Report concludes that from 2003 – 2012, inclusive, IRS has paid **122 billion dollars**, give or take 11 billion dollars in EITC in error. (Remember, this does not include ACTC paid in error.)

Later that year, Sen. Sessions proposed an amendment to the budget bill to bar payment of ACTC on a tax return using an ITIN. Sen. Reid killed it.

Last year, 2014, the Inspector General issued a report entitled "Existing Compliance Processes Will Not Reduce The Billions Of Dollars In Improper Earned Income Tax Credit And Additional Child Tax Credit Payments." IRS is required by law to identify programs that present a high risk of fraud and to take action to prevent it. IRS identifies only EITC, and not ACTC, as high risk. The Inspector General concluded the two programs have similar risks of fraud, and estimated that between 25.2 and 30.5 percent – or **6.5 billion dollars**, give or take half a billion dollars - of the ACTC payments made for 2013 should not have been made. Similarly, **14.5 billion dollars** of EITC payments in 2013 were in error. For 2012, IRS paid out **63 billion dollars** in EITC and **26.6 billion dollars** in refundable ACTC.

On Monday, the Center for Immigration Studies, with information obtained under the Freedom of Information Act, reported that "more than 5.5 million new work permits were issued to aliens from 2009 to 2014, above and beyond the number of new green card and temporary worker admissions in those years."

The “executive action”

It is unfortunate that the “deferred action” eligibility requirements do not include government confirmation that the applicant has neither filed for nor received nor been party to tax or other federal benefits for which he is not eligible.

The “executive action” calls to mind Samuel Johnson’s description of second marriages: they are the triumph of hope over experience.

We know from experience that the actions upon which the Administration embarks are guaranteed to inflict substantial damage on tax administration and enforcement, and to drain even more billions of hard-earned dollars from the Federal Treasury than past follies are already costing and continue to cost.

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You can have open borders, or you can have a welfare state.  
You cannot have both.  
For long.

*Paraphrasing the late and very great Milton Friedman*

Testimony Before the

**U.S. Senate Homeland Security & Governmental Affairs Committee**

**“Deferred Action on Immigration: Implications & Unanswered Questions”**

Testimony of

Luke Peter Bellocchi

Of Counsel

Wasserman, Mancini & Chang, PC

Former

Deputy Ombudsman for Citizenship & Immigration Services  
and

Assistant Commissioner for Customs & Border Protection

U.S. Department of Homeland Security

February 4, 2015

10:00 AM

SD-342 Dirksen Senate Office Building

**“Is U.S. Citizenship & Immigration Services Ready to  
Take on the President’s New Immigration Initiative?”**

Luke P. Bellocchi

Mr. Chairman, Ranking Member, and Committee Members: thank you for allowing me the honor of testifying before this committee, for which I was once a staff member. By way of background, I have worked on immigration law and policy since 1996, starting as an attorney advisor at the State Department, and later as a senior executive at the Department of Homeland Security (DHS) from 2007-2009. In between, I worked as a Congressional staff member on various immigration reform and border security bills in both the House and Senate. I am now a practicing immigration attorney in the private sector.

The President’s initiative to stay deportation of an estimated four to five million undocumented immigrants in the United States will greatly increase pressure on U.S. Citizenship & Immigration Services (USCIS) to handle millions of new immigration applications in the coming months of 2015. There is clearly a potential for bottlenecks to form at the intake, fee processing, data-collection, adjudication, request-for-evidence, document manufacturing stages, in corollary applications, and even perhaps at foreign consular offices (that are issuing passports and foreign official documents). At each of these bottlenecks, there may be a temptation to streamline processing or change processing priorities.

Background on DAPA/DACA and Immigration Reform Efforts

The President announced on November 20 of last year a program, known as Deferred Action for Parental Accountability (DAPA), that would allow an estimated five million undocumented immigrants in the United States to obtain protection from deportation and legal work authorization; it would also expand an earlier program called DACA (Deferred Action for Childhood Arrivals) which has seen 692,000 initial applications, with 610,000 approvals. Many commentaries have been made that this program including that many of those eligible for the program will not take up the offer for fear that the program will be rescinded at a later date when their location and employment might be revealed to enforcement agencies. Others have commented on whether this program usurps Constitutional and traditional Congressional authority over immigration and naturalization law and policy.

During consideration of the 2005, 2006 and 2007 comprehensive immigration bills, I was a staffer in the House and then Senate but I witnessed a monumental effort by the George W Bush administration to pass comprehensive immigration reform, to include sending two cabinet officials – Secretary of Homeland Security Chertoff and Secretary of Commerce Gutierrez – to negotiate a bill over countless hours in Senate Chambers. A similar effort is needed in working with Congress to reform our immigration system in a way that can be accepted by all sides and constitutes good long-term immigration policy. To be sure, most law-abiding immigrants have and will contribute greatly to the wealth of the nation and Congress should consider how best to handle and process immigration applications in a safe and secure manner.

Based on the President's announcement, USCIS has begun work to handle a massive surge in workload from incoming DAPA and DACA-expansion applications and DACA extensions. USCIS is slated to take in DACA-expansion cases later this month, and DAPA applications are expected to be available 180 days after the President's announcement in November (i.e., May 20, 2015). The Administration estimates that about five million individuals are eligible to apply under the DAPA and expanded-DACA program.<sup>1</sup> Various organizations, including DHS and Pew Foundation have estimated the undocumented immigrant population to be 10-12 million.<sup>2</sup> All of these are *estimates*, however, and it is impossible to know exactly how many individuals will actually apply under the program. Thus, USCIS' workload may be much greater or less than estimated, and USCIS needs to be ready for any contingency for handling the intake of initial DAPA applications as well as processing documents and security checks.

#### Impact of USCIS Processing Timeliness

Talk within the immigrant community indicates some unease with applying for the program. There are questions over whether the program will continue in future years and whether their application information will be shared with law enforcement, but there is also concern that the process will not be smooth and that they and their employers may be left in a lurch. From their perspective, they may be in a relatively stable, albeit unauthorized, position with an employer, but the moment they apply for DACA or DAPA, compliance and Employment Authorization Documents (EADs) come into the picture. USCIS processing can have quite an impact on both employers and immigrants.

For employers, they must fill out I-9 forms (for employment eligibility verification) and check EADs or other documents, and comply with wage, insurance, and other requirements, which may increase their costs. That means if an EAD is not processed before expiration, there will be work stoppage. Unlike normal processing for legal employment-based immigrants, there is usually a labor certification process with the Department of Labor, which takes measures to assure that no American worker is willing and available to take positions that a foreign worker is applying to take. Since the DACA and DAPA program skips these labor market tests, the impact of millions of new workers with legal employment authorization documentation on the economy will be uncertain and processing speed for EADs could be influenced by changing economic conditions. The impact on wages and business costs becomes more unclear if USCIS cannot process DAPA and DACA cases in timely manner.

For DAPA and DACA applicants, delays in or simply lengthy USCIS processing may put them in a more-difficult position as they may not have stable employment once they enter the program. The Citizenship & Immigration Services Ombudsman held a teleconference last month

<sup>1</sup> White House, <http://www.whitehouse.gov/the-press-office/2014/11/20/fact-sheet-immigration-accountability-executive-action>. I have been given estimates from DHS officials that the expected number may be closer to 2-3 million applicants.

<sup>2</sup> Pew Research Center, Unauthorized Immigrants: 11.1 million in 2011. <http://www.pewhispanic.org/2012/12/06/unauthorized-immigrants-11-1-million-in-2011/>. See also Ruth Wasem, Congressional Research Service, "Unauthorized Aliens in the United States: Estimate Since 1986," <http://fpc.state.gov/documents/organization/39561.pdf>. Hoefer, et al, DHS, "Estimates of the Unauthorized Immigrant Population Residing in the United States," [https://www.dhs.gov/sites/default/files/publications/ois\\_ill\\_pe\\_2011.pdf](https://www.dhs.gov/sites/default/files/publications/ois_ill_pe_2011.pdf).



with immigration practitioners concerning DACA renewals; some participants revealed that a significant number of DACA applicants who were approved for EADs are not able to get reauthorized in time to keep their employment authorization current, forcing them to stop work indefinitely. Timely production and control of EADs has been an issue in the past as reported by the CIS Ombudsman in 2011.<sup>3</sup> Although USCIS is required by regulation to approve EADs within 90 days,<sup>4</sup> they have asked DACA applicants to file 120 days in advance of expiration, but are still not able to process EADs in time.<sup>5</sup> Reliable sources have informed me that USCIS actually adds 90 days EAD processing time to the end of the DACA processing, which might be more justified for an initial DACA application, but makes no sense for a DACA renewal, which will take just as long (i.e., an applicant for renewal can expect to be out of employment authorization for up to 180 days while the renewal and then EAD applications are considered one after another).<sup>6</sup> Few American employers and employees are satisfied with this result as work stoppage results in hardship for both.<sup>7</sup> I can imagine how a DACA applicant under these circumstances might feel as if the DACA (or DAPA) program is not worth it.

The addition of an estimated five million more applicants may overwhelm USCIS' ability to issue EADs in time and USCIS may consider extending the validity of EADs to keep processing under control.<sup>8</sup> In fact, almost all EADs (i.e., the employment authorization cards) are produced at one facility, and it is not clear that the facility has the physical capacity to produce that many EADs in short order.

#### General Description of USCIS as an Application Processing Agency

USCIS is an organization of roughly 13,000 full-time officers and 5,000 contractors, who engage in the processing of about six million immigration benefit applications of one type or another each year. Contractors can only fulfill support functions and not actual adjudication, as that is considered an inherently governmental function. Both the number of personnel and applications changes each year, but over the past few decades, the number of both have grown

<sup>3</sup> CIS Ombudsman, "Employment Authorization Documents," Meeting the 90 Day Mandate and Minimizing the Impact," July 18, 2011, <http://www.dhs.gov/xlibrary/assets/cisomb-employment-authorization-documents-07182011.pdf>.

<sup>4</sup> 8 CFR 274a.12.

<sup>5</sup> USCIS data for Fourth Quarter, FY2014, indicates 374,589 EAD applications are pending, [http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/all\\_forms\\_performancedata\\_fy2014\\_qtr4.pdf](http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/all_forms_performancedata_fy2014_qtr4.pdf)

<sup>6</sup> USCIS apparently has stopped the issuance of interim EAD documents (as it make no sense for USCIS to divert resources from approving the regular EAC) and there have been past concerns regarding fraud and security in issuing them from local USCIS offices. The Department of Justice Inspector General found "thousands of controlled employment authorization documents unaccounted for and equipment missing" and another audit found "thousands of unaccounted for certificates of naturalization." Office of Inspector General, Department of Justice, "Follow-up Inspection of the Immigration and Naturalization Service Document Fraud Records Corrections," Report Number I-2000-021, and "Document Fraud Records Corrections," Report Number, I-96-09, citing various other OIG Reports.

<sup>7</sup> CIS Ombudsman, "Employment Authorization Documents," Meeting the 90 Day Mandate and Minimizing the Impact," July 18, 2011, <http://www.dhs.gov/xlibrary/assets/cisomb-employment-authorization-documents-07182011.pdf>.

<sup>8</sup> Normally, an EAD is valid for one year, but in certain cases, EADs are issued with two years or more validity. USCIS, <http://www.uscis.gov/news/questions-and-answers/uscis-issue-employment-authorization-and-advance-parole-card-adjustment-status-applicants-questions-and-answers>.

dramatically. However, the USCIS systems and processes remain the same: it is fundamentally a labor-intensive, case-intensive, *paper*-based adjudicatory entity. That is, by-and-large, each year six million *paper* applications are taken in through the mail by USCIS, data-entered, and reviewed by officers with support from contractors. Note that most application adjudications are handled at one of four service centers that are not open to the public, but other services are handled at hundreds of local USCIS offices.

The first step in application processing is intake, which has in recent years changed somewhat for security and control purposes, but is also fundamentally a paper mail-based intake system. Once an applicant sends an application and fee to USCIS, most applications are scanned and payment taken at USCIS “lockbox” facilities. Fees fund almost all of USCIS’ \$3.2 billion budget, but all of it until recently was taken in by paper checks. In 2008, when I investigated USCIS’ “lockbox” (there are now three) where fees are collected for applications, I could not get an answer as to why USCIS refused to accept other forms of payment such as credit cards, especially as private bank executives who were present said it would be easily possible. The fact is, all applicants are required to calculate total amounts from a menu of USCIS fees and pay *the exact amount* by check – if that amount is off by even a penny (overpayment or underpayment) the check and application are rejected and sent back. At that time, the Ombudsman’s office calculated that *seven percent* of applications were mailed back, costing USCIS millions in postage and processing, but more damaging, many applicants missed deadlines to maintain their status and employers waited longer to get their employees on board. USCIS recently has made efforts to allow applicants to pay for some applications by credit card, but as the Citizenship & Immigration Services Ombudsman recently reported, the system still faces many challenges.<sup>9</sup>

In addition to credit card payments for some applications, the USCIS Transformation Office has finally set up a Web-based application system for a small handful of applications.<sup>10</sup> However, none of these applications are A to Z electronic processes, and often supporting documents and a copy of the application must still be sent in to USCIS by mail. Although the application for an EADs is one of these applications, it cannot be used in conjunction with an application for DAPA or DACA. Thus, all 692,000 previous DACA applications were paper-based applications mailed to USCIS, and as it stands, the estimated millions of DAPA and expanded-DACA applications will be accepted in this manner.

Normally, acceptance of paper applications in the mail do not face problems in intake processing, but application surges in the past have resulted in mail and applications sitting in vulnerable and exposed overflow areas and in some cases purposely destroyed.<sup>11</sup> The Transformation Office at USCIS has spent roughly \$1 billion to date and is slated to spend \$1.7 billion to get an electronic application system (now called Electronic Immigration System, ELIS) in place.<sup>12</sup> USCIS has finally set-up a small number of applications that can be entered

<sup>9</sup> DHS CIS Ombudsman, 2014 Annual Report to Congress.

<sup>10</sup> There are currently eight USCIS applications that can be filed electronically (including I-140 Petition for Alien Worker, I-90 Application to Replace a Lost/Stolen Green Card, I-131 Application for Travel Document, I-765 Application for EAD, I-821 Application for Temporary Protected Status, I-907 Premium Processing, I-526 Alien Entrepreneur Application, I-539 Change of Status). <http://www.uscis.gov/e-filing>.

<sup>11</sup> John Broder, “INS Shredder Ended Work Backlog, U.S. Says,” *The New York Times*, January 31, 2003.

<sup>12</sup> GAO, “Consistent Adherence to DHS Acquisition Policy Could Help Improve Transformation Program Outcomes,” November 2011.

electronically,<sup>13</sup> but many of them still require sending in a paper copy and supporting documents. One has to wonder whether there is really an incentive for USCIS to transition to electronic processing as new systems may require a new personnel structure. Electronic-filing, through ELIS or otherwise will not be ready for DAPA and DACA intake.<sup>14</sup>

Once paper applications are taken in by USCIS, and fees accepted, most applications are sorted out and sent to one of four service centers around the country where they are adjudicated. Officers and contractors at Service Centers take applications and manually check information in the paper-application with a “Wang-era” computer database system called CLAIMS3 which serves as USCIS’ primary case management and information database concerning applications and applicants.<sup>15</sup> CLAIMS3 has almost no search functionality and provides very limited information about application numbers and case status.

Normally, once an adjudicator actually examines a paper application from the pile sitting in their cubical, the application is reviewed against a checklist of required items and requirements for the relevant type of immigration status (“visa”). Often an officer finds some deficiency or weak evidence and types up what is known as a Request for Evidence (RFE) that is sent back to the applicant. The applicant has a set amount of time to respond to the RFE or the application is rejected. Many applicants have complained about the amount and nature of RFEs as some appear to be perfunctory or sometimes nonsensical. In some cases, during the pendency of the case, an adjudicator may find an indicator of fraud, or may conduct a name check, and send the case to the USCIS anti-fraud office (called Fraud Detection & National Security Directorate, FDNS) for investigation. With or without RFE response, an adjudicator approves or rejects an application, usually within a certain target timeframe for differing application types – six months is the longest USCIS-stated target, while EADs must be done within 90 days by regulation. If the application is denied, USCIS normally sends the applicant an explanation as to why the application did not meet the relevant criteria. If an application is approved, an approval form is sent to the applicant.

For some applications, this may be all that is needed to form a basis to remain in the U.S. or work legally. For others who are waiting abroad, they must make an appointment at a U.S. Consulate or Embassy to be interviewed for an actual visa stamp. If the interviewing consular officer believes, even with the approved USCIS application, that the case is fraudulent or otherwise does not meet the criteria for a visa, the consular officer may conduct an investigation abroad and/or send the application back to USCIS for review. USCIS can reaffirm or deny the application, but many cases are simply lost in the shuffle.

#### USCIS DAPA Processing and Possible Pitfalls

The regulations and guidance for DAPA have not yet been issued, but preliminary documents from the Department of Homeland Security (DHS) indicate that applicants must

<sup>13</sup> See note 9.

<sup>14</sup> I understand that USCIS has plans to introduce a computer “wizard” program that may assist applicants in filling out DAPA and DACA applications by posing queries and inputting responses into the applications, but that ultimately the application and supporting documentation must be mailed to USCIS.

<sup>15</sup> Other types of applications, such as naturalization applications, will go into another database, CLAIMS4.

submit an application and provide proof that they have continuously resided in the U.S. since January 1, 2010, similar to the residency requirements under DACA.<sup>16</sup> To prove residence, applicants must submit utility bills, employment records, bank, school, or religious records, and affidavits. DACA applicants are required to prove identity by providing a passport, birth certificate, or “any other document with a photo.” They are also required to show their criminal record, and are barred from the program if they have been convicted of a felony, significant misdemeanor,<sup>17</sup> or three misdemeanors.<sup>18</sup> The irony of this program is that applicants must *prove that they were in the United States illegally* during this time, and USCIS was known under the DACA program to send requests for more evidence that applicants were actually in the U.S. *illegally* before the relevant date (while most of the time other applicants are trying to prove that they are legally in the U.S. and USCIS is determining whether they were actually legally here). Under DACA, applicants filled out an application, known as an I-821D, with supporting documents as just described above. DAPA applicants will have to fill out an application that is substantially similar to this.

The previous DACA application process appears on its face to have been run through USCIS without too much difficulty and without hiring significant numbers of permanent staff<sup>19</sup> to handle the 690,000 DACA applications.<sup>20</sup> However, USCIS practiced a surge tactic used in the past of diverting officers working on one type of application to concentrate on a higher-priority application – in this case DACA.<sup>21</sup> The result of this diversion of resources is not usually recognized outside of USCIS until significant backlogs of other applications are discovered and applicants begin to complain. In the case of DACA, backlogs formed for I-90 (renew/replace green cards) and I-130 (family-based green cards),<sup>22</sup> in some cases, such that processing times exceeded 12 months. Backlogs at USCIS in the past, such as in 2003-2004, have required specific appropriated backlog funds to obtain additional temporary resources.

<sup>16</sup> Note that resided is a term that could mean someone left and reentered the country, but still intended to live in the U.S.

<sup>17</sup> This generally includes crimes involving domestic violence, sexual abuse, drug distribution, unlawful possession of a firearm, and driving under the influence. See Immigrant Legal Resource Center, [http://www.ilrc.org/files/documents/ilrc-2012-daca\\_chart\\_1.pdf](http://www.ilrc.org/files/documents/ilrc-2012-daca_chart_1.pdf).

<sup>18</sup> These bars are similar to bars used in the 1986 legalization program, Immigration Reform and Control Act of 1986. Note these are substantially different bars than are used to exclude persons abroad who wish to enter the U.S. under normal legal processing (which include bars for conviction of a crime of moral turpitude, health-related reasons, terrorism or other security concerns, likelihood to become a public charge, child abduction, intent to work without labor certification, intent to immigrate permanently, and a host of others).

<sup>19</sup> It has been reported that 900 new employees (mainly contractors) were hired in response to the increased workload from DACA. J. Gerstein, “Bureaucratic Nightmare on Immigration?” Politico, Nov 21, 2014. <http://www.politico.com/story/2014/11/immigration-action-government-implement-113108.html>.

<sup>20</sup> See latest USCIS DACA figures at:

[http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA\\_fy2014\\_qtr4.pdf](http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA_fy2014_qtr4.pdf), including FY2014 numbers that indicate that 32,395 applications were denied and 59,715 are pending to date.

<sup>21</sup> J. Gerstein, “Bureaucratic Nightmare on Immigration?” Nov 21, 2014.

<http://www.politico.com/story/2014/11/immigration-action-government-implement-113108.html>

<sup>22</sup> See USCIS Data Sets for 2012 - 2014, <http://www.uscis.gov/tools/reports-studies/data-set-form-i-130-petition-alien-relative>. In FY2012, third quarter, USCIS had a total of 82,496 pending I-130s; in June 2013, there were 1.9 million pending I-130s; that number went down in September 2013 to 885,935 and in March 2014 to 840,017. In fourth quarter, FY2014, there were 478,121 I-90 applications pending.

[http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/all\\_forms\\_performancedata\\_fy2014\\_qtr4.pdf](http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/all_forms_performancedata_fy2014_qtr4.pdf).

USCIS has typically shifted workload away from other types of applications to handle priority or high-profile applications, and will probably do so with the DAPA applications. Using this tactic alone will not be sufficient to meet the flood of millions of applications expected under DAPA and expanded-DACA, and the question arises whether it is fair for these other applicants to be waiting extended periods because of DAPA.

The administration has informed this Committee that it plans to hire 1000 new workers (700 of which will be new federal agents, and 300 contractors). However, questions immediately surface whether this number will be sufficient without either creating extreme backlogs in one or more applications type, or damaging the quality of application adjudications. DACA involved application numbers that are about 1/10<sup>th</sup> the estimated size of the DAPA applicant pool at five million (versus 690,000 for DACA). It is hard to see how an additional 1000 workers, even if fully trained and experienced, can make up for an additional five million applications USCIS is expected to receive – meaning each new worker would have to process and adjudicate 4500 applications within the six month target (including weekends, that would mean 25-27 applications per day for 1000 adjudicators).

Further, it is unclear how USCIS will hire 700 full time federal agents, screen them for employment and then for security clearances, train them, and deploy them in time to handle millions of new applications and meet the six-month turn-around time for each application submitted. Training new employees in the complexity of immigration law and policy is no small matter – a number of federal courts and Congressional Research Service (CRS) have likened the complexity of immigration law to that of the tax code.<sup>23</sup> The Department of Justice Inspector General discussed numerous problems with new officers' inadequate training that led to a host of problems under a program called Citizenship USA, conducted during the end of the Clinton administration. Internal sources inform me that USCIS intends to quickly hire new officers (many veterans are expected to qualify for these jobs under veterans preference and quickly be selected). Further, some retirees are expected to take the new positions, and some more seasoned officers will move over from other parts of USCIS. This may create gaps in other parts of USCIS' application processing.

#### Past Experience with Citizenship USA Program and Background Checks

Under the Citizenship USA program, USICS (then called the Immigration & Naturalization Service, INS) saw a massive increase in and prioritization of what turned out to be over one million naturalization applications from 1995 to 1996. To handle the increased workload, INS abbreviated training, from 16 weeks to one week (in some cases less than 40 hours of training), of newly hired officers.<sup>24</sup> INS at the time also requested abbreviated FBI background checks for new employees (and I have heard rumors that USCIS intends to do the same with their new hires for DAPA). Depending on the security clearance and background check type, this process currently may take an average of 53 days.<sup>25</sup> In the rush to complete over

<sup>23</sup> Stephen Vina, Congressional Research Service, July 29, 2005.

<sup>24</sup> Department of Justice, Office of Inspector General, Report on Citizenship USA, <http://www.justice.gov/oig/special/0007/cusainp.pdf>.

<sup>25</sup> Christensen, et al, Congressional Research Service, "Security Clearance Process: Answers to Frequently Asked Questions," September 9, 2013.

one million naturalizations, thousands of applications were incorrectly approved. Some 10,800 approvals included persons with felony records, and another 60,398 had no record of any background check at all, according to the Department of Justice. In the end, DOJ underwent a long program of trying to denaturalize many of them through court proceedings.<sup>26</sup> What happened was in part due to poor planning and coordination with FBI, which could not handle the massive upsurge in background checks, but also because of a disregard for fraud checks.

Background checks are important not only for USCIS employees but for any applicant we legalize or allow into the country as well. Those who have entered the U.S. with a visa that was issued abroad, including those who may have overstayed their visa, have undergone some background screening before entering the U.S. Those who entered the U.S. without any inspection have probably never been screened. In either case, it is incumbent on USCIS to conduct vigorous background checks on those we invite into legal status in the U.S.

However, one report last year, based on a Freedom of Information Act (FOIA) request, revealed that USCIS memorandums instructed USCIS to conduct “lean and lite” background checks, including an abbreviated TECS<sup>27</sup> check, on DACA applicants, before their applications are adjudicated, and that “biometric processing should not be refused because an applicant does not present an acceptable ID.”<sup>28</sup> Informal responses to this report indicate that DACA applicants were biometrically checked with the FBI, but that the anti-fraud office, FDNS, was not invited to investigate or examine specific cases or patterns of fraud.

#### Criminal and Terrorism Checks – Boston Marathon Bomber Case

According to the Administration, all applicants for DAPA will be checked through IDENT, FBI, and TECS databases. Since the time of Citizenship USA, most FBI checks are conducted electronically, and responses are quick if there is no derogatory information about an applicant; however, any flags that arise from a check must be examined manually and resolved, creating a potential bottleneck with a surge of cases.

The FBI check is mainly for criminal background checks (for suspects and crimes committed in this country) and it is less clear how vigorous the counter-terrorism check is, but all the more important for individuals in this country who have never been screened before entry. As you may recall, the Boston Marathon bombing, April 15, 2013, involved two brother perpetrators, one of whom (Dzhokhar “Jahar” Tsarnaev) was naturalized September 11, 2012, despite the FBI having information from Russian authorities that the brothers were involved with

<sup>26</sup> Chicago Tribune, “33 Felons’ Citizenship to be Revoked by INS,” March 6, 1997, [http://articles.chicagotribune.com/1997-03-06/news/9703060195\\_1\\_citizenship-usa-citizenship-applications-citizenship-last-year](http://articles.chicagotribune.com/1997-03-06/news/9703060195_1_citizenship-usa-citizenship-applications-citizenship-last-year).

<sup>27</sup> The Treasury Enforcement Communications System, TECS, is Customs and Border Protection’s main immigration screening database.

<sup>28</sup> Judicial Watch, June 11, 2013, “Documents Reveal DHS Abandoned Illegal Alien Background Checks to Meet Amnesty Requests Following Obama’s DACA,” which has links to various USCIS emails obtained by Freedom of Information Act requests.

terrorist activity.<sup>29</sup> If the counter-terrorism namechecks were working in conjunction with immigration application background checks, a red flag should have been raised.

While applicant background checks are vetted through the FBI Terrorism Screening Center (TSC), this database only contains an abbreviated terrorist watch list (i.e., the no-fly and “selectee” lists) and it is not clear that immigration applications are checked against the larger database of known or suspected terrorists, the Terrorist Identities Data-mart Environment (TIDE).<sup>30</sup> This can result in a “no record” response to an FBI background check, even if the Intelligence Community has derogatory information concerning an applicant. Information-sharing and coordination on known or suspected terrorists has been a problem with past cases, such as with Umar Abdulmuttalab, the “underwear bomber,” who ignited explosive materials on a flight on its approach to Detroit in December, 2009. In that case, the perpetrator was placed in the TIDE database, but not on the no-fly list.<sup>31</sup> The terrorist (no-fly and selectee) watch list still also relies on agencies to nominate individuals to the list and that does not always happen.<sup>32</sup> In addition to foreign-based terrorism, homegrown terrorism continues to be a threat, with the year between May 2009 and November 2010 alone seeing 22 homegrown jihadist-inspired terror plots in the U.S. (many resulting in arrests).<sup>33</sup>

USCIS FDNS has officers at almost all Joint Terrorism Task Forces (JTTFs), at FBI TSC and the National Counterterrorism Center (NCTC), to resolve immigration related terrorism issues, but it is not clear that they have access to all information needed to resolve immigration application issues related to suspected terrorists. Even with access, the background check that is run for USCIS applicants apparently does not automatically check against the entire TIDE database and flag cases so that an officer can examine the case more closely.

#### USCIS Fraud Detection & National Security Directorate (FDNS) and Anti-Fraud Efforts

Fraud can be hard to measure – you do not really know how many fraudulent applications get through. When I was stamping visas early in my career at overseas posts, we generally assumed many documents would be fraudulent. But at USCIS, when a facially valid application is presented, it can be hard to deny. Something has to trigger an adjudicator to send it to the anti-fraud office to investigate.

FDNS is the primary office for USCIS anti-fraud investigations. FDNS has a budget of around \$100 million, \$40 million of which comes from a set-aside of a portion of employment-

<sup>29</sup> U.S. House of Representatives, Committee on Homeland Security, “The Road to Boston: Counterterrorism Challenges and Lessons from the Marathon Bombings,” March 2014. Reuters, “Russia Warned U.S. about Boston Marathon bomb suspect Tsarnaev, report,” March 25, 2014.

<sup>30</sup> See Krouse, et al, Congressional Research Service, “Terrorist Watchlist Checks and Air Passenger Prescreening,” December 30, 2009, RL33645, for an explanation of various watchlist formation, dissemination, and use.

<sup>31</sup> Eileen Larence, Government Accountability Office, “Terrorist Watchlist: Routinely Assessing Impact of Agency Actions Since the December 25, 2009 Attempted Attack Could Help Inform Future Efforts,” May 2012, GAO-12-476.

<sup>32</sup> Id. See also, Senate Homeland Security & Governmental Affairs Committee, “A Ticking Time Bomb,” report on Fort Hood shootings of 2009, February 3, 2011,

[http://www.hsgac.senate.gov/imo/media/doc/Fort\\_Hood/FortHoodReport.pdf?attempt=2](http://www.hsgac.senate.gov/imo/media/doc/Fort_Hood/FortHoodReport.pdf?attempt=2).

<sup>33</sup> Bjelopera, et al, Congressional Research Service, “American Jihadist Terrorism: Combating a Complex Threat,” December 7, 2010.

based non-immigrant visa fees that is mandated in law. Fraud does occur in the context of more than just temporary employment visa applications and one can question why a substantial portion of the FDNS budget comes from that alone. It is hard to say whether that budget is sufficient to deter or combat fraud when dealing with six million, and with DAPA perhaps far more, immigration applications. FDNS provides indicators of fraud to USCIS adjudicators and asks them to refer cases. It follows up with investigations of cases when warranted; this includes sending personnel to the field to verify businesses and offers for employment, or the veracity of a claimed family relationship. Sometimes investigations can take many months, possibly because of limited resources. At this time, FDNS has limited capacity to conduct proactive data-mining of CLAIMS3 to search for indications of fraud in particular cases or examine fraud trends. If it had expanded ability to electronically verify facts, perhaps using private database services, fraud investigations could be less time consuming. Without transformation of CLAIMS3 to a more advanced case processing system, like ELIS, FDNS capability is also limited. Nevertheless, I understand FDNS has extracted some data from CLAIMS3 to conduct limited searches.

DACA applications had a low refusal rate (at about four percent) and this may not be unexpected because with a population of individuals who have little to no records or identity trail, there will also be little in the way of derogatory information. However, I have been informed that another reason was that the anti-fraud office (FDNS) was taken out of processing so that no investigations would be conducted. That is not to say that there was a high rate of fraud or basic background checks are not conducted, but it would be difficult to verify without FDNS involvement.

For DACA and DAPA entrants who entered the U.S. without inspection, we have never conducted a background check on them and have very little knowledge of their identity; much of their base identity and documents will be established through foreign embassies and consulates (e.g., passports, birth certificates).<sup>34</sup> In addition, DAPA applications will be based on family relationships that will only be verified by assertions, affidavits, foreign documentation, or easily manufactured documentation.

To improve security and anti-fraud measures on this application pool, USCIS might consider the following. In the short term, USCIS could contract with independent data services to verify employment and employer relationships and verify residency and identity inputs in DAPA and DACA applications. USCIS also could have FDNS extract data on already approved DACA applications to study trends or search for fraud indicators. Applications are scanned at intake and used to populate CLAIMS3 data; FDNS may be able to use the scanned data to examine patterns of fraud. USCIS may want to consider random or data-driven checks of applications and possible interviews by FDNS officers. FDNS could run random or data-driven checks on DAPA family relationships (i.e., possible DNA testing) if there are indications of fraud. FDNS could build relationships with foreign official document issuing agencies to verify documents and understand the strength of foreign official documentation used in conjunction with DAPA and DACA applications. Although FDNS does conduct checks with INTERPOL for wanted criminals that may be in the applicant pool, further coordination with foreign law enforcement may raise flags for applicants with little known background. USCIS should modernize application intake through the ELIS system or some other system, in such a way that

<sup>34</sup> See Instructions for I-821D, <http://www.uscis.gov/sites/default/files/files/form/i-821dinstr.pdf>.



USCIS anti-fraud efforts can “data-mine” for indicators of fraud. USCIS also may expand FDNS data-driven anti-fraud capability through further USCIS access and better resources (as this type of anti-fraud effort is less intrusive and time-consuming than the current field investigation).

#### Conclusion

I want to be clear that most USCIS officers are hardworking and patriotic officials of the DHS and I am confident in the ability of USCIS officers to handle any major increase in workload, but DAPA and expanded-DACA would be an unprecedented increase in applications submitted at any one time. Currently, USCIS officers handle six million applications of varying degrees of complexity each year,<sup>35</sup> and each application type has a current stated processing time (or backlogs) of between two to six months (the targeted maximum length of time for USCIS processing), including six months for DACA applications.<sup>36</sup> The addition of an estimated five million applications to the system will be no small matter and there is a strong possibility that bottlenecks will form at the intake, fee processing, data-collection, adjudication, request-for-evidence, document manufacturing stages, in corollary applications, and even perhaps at foreign consular offices (that are issuing passports and foreign official documents). At each of these bottlenecks, there may be a temptation to streamline processing without proper quality checks.

So in answering the theme of this testimony – is USCIS ready for DAPA – I would say that it is of course “ready” if expectations are tempered. USCIS can take in four to five million additional applications, but certain facilities and processes must be ready for the flood. At the intake level, there may be physical limitations for excess mail and throughput at fee collection. At other levels USCIS must be ready for additional data-entry/collection, anti-fraud review, and document production (especially employment authorization cards). At the adjudication level, there must be enough *fully-trained* officers to handle millions of new applications, and USCIS must be given clear direction on priorities – should American businesses that went through the legal process to get (often specialty or low-supply) foreign workers on board expect longer processing periods because resources have been pulled to handle DAPA applications? Should American citizens expect longer processing times for their spouses or immediate relatives because of the same? These questions should not be left unresolved, and hidden in months old backlog data, but should be clarified up-front. And if the answer to these questions is “no,” then USCIS should expect to ramp up resources sufficient to meet the expected DAPA application in-flow, or temper expectations for processing times.

Thus, with DAPA, USCIS and the administration should be realistic about the speed and care with which they can process millions of DAPA applications. In being realistic and forthcoming about expectations for processing times, USCIS will increase trust with policy-makers and the public, and will be able to fulfill its mandate to handle quality adjudications of all its applications.

<sup>35</sup> USCIS Data, <http://www.uscis.gov/tools/reports-studies/immigration-forms-data>.

<sup>36</sup> USCIS Processing Times, <https://egov.uscis.gov/cris/processingTimesDisplay.do>. (It should be noted that many applicants for green cards, once processed, must wait in line for years to obtain their legal green card.)

**Testimony of Shawn Moran  
On behalf of the  
National Border Patrol Council  
In front of United States Senate Homeland Security and Governmental Affairs Committee  
February 4, 2015**

Chairman Johnson, Ranking Member Carper, members of the Committee, on behalf of the 16,500 Border Patrol Agents whom I represent, I would like to thank you for having this hearing.

My name is Shawn Moran and I am the Vice President and national spokesperson of the National Border Patrol Council. I am a 17 year veteran of the Border Patrol and have spent the majority of my career in the Imperial Beach and El Cajon Border Patrol Stations in California. I have also been temporarily assigned to several sectors and stations along the southwest border during that time.

Before I discuss how I believe the President's decision will impact border security, I want to be clear that I am not a lawyer. I am not here to comment on the legality of the President's actions. I am here as a federal law enforcement agent to discuss how the amnesty provided in November will impact border security. Unfortunately, I do not believe the border security implications were fully considered prior to the issuance of the executive order and that concrete actions need to be taken by Congress and the Administration this year to bolster border security.

Albert Einstein's definition of insanity is doing the same thing over and over again and expecting a different result. If you look at the history of our response to illegal immigration we certainly meet that definition. In 1986 Congress passed and President Reagan signed the Immigration Reform and Control Act (IRCA). This legislation was supposed to "solve" the illegal immigration problem in this country and in the process legalized illegal aliens who had been in the country prior to 1982.

What was the result? Illegal immigration exploded. The Pew Research Center estimates that the population of illegal aliens in this country in 1990, immediately following the passage of IRCA, was 3.5 million. By 2007 that population had swelled to 12.2 million. Cities like San Diego, where I am stationed, and El Paso were nearly overrun.

In my career, I have arrested and interviewed thousands of illegal aliens. In deciding whether or not to attempt to enter this country illegally, these individuals weigh the risks and potential rewards. These individuals are risking not only a lifetime of savings to pay the smugglers but literally their own lives in the process. They know the border is a dangerous place. They know

that they are opening themselves up to predation from smugglers in addition to the physical hazards of crossing the Rio Grande River, the Arizona desert, or even the Montana wilderness.

Unfortunately since the passage of IRCA there is a perception among illegal aliens that if you can get over the border and can hide in the shadows long enough, eventually there will be a pathway to legal status. This pathway may be by virtue of the duration you have been here or through your children. We need only look to the debacle last summer with unaccompanied minors to see how prevalent this perception is among potential illegal aliens.

Last year the Administration took great pains to point out that their most recent expansion of Deferred Action for Childhood Arrivals (DACA) was a continuation of deferred actions that had been taken by previous Administrations. We were all told that there was precedent for their actions. The Administration was completely correct. There were ample amounts of precedent and therein lies the problem. We will never be able to stop illegal immigration until potential illegal aliens believe that it is a losing proposition. They need to know that they will be found and that hiding in the shadows will do them no good. Employers need to know that if they hire illegal aliens, there will be credible sanctions.

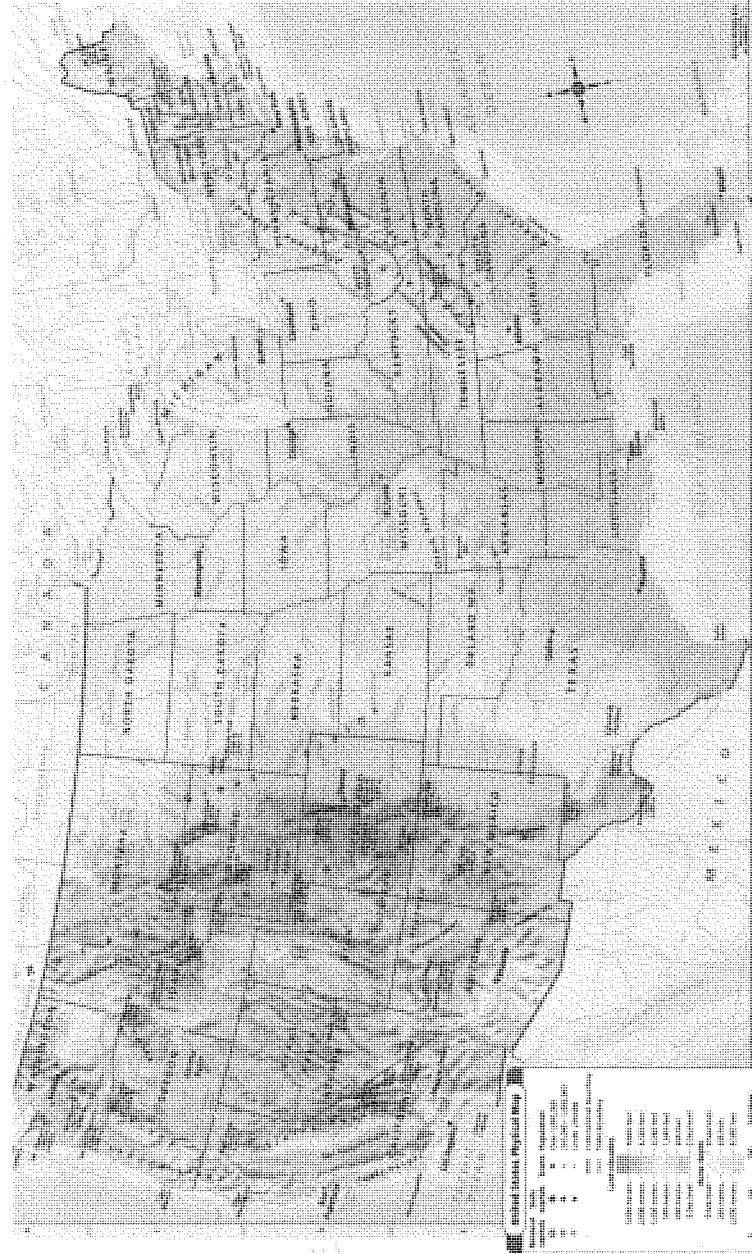
The question then becomes what steps this Committee, within your jurisdiction, can take to strengthen border security before the next wave of illegal immigration comes. Several suggestions that I have include:

- Increased manpower- Currently there are 21,370 Border Patrol Agents in this country. Under sequestration we effectively lost 1,500 full time equivalents (FTEs) that have thankfully been restored under the Border Patrol Pay Reform Act introduced by Senators Tester and McCain. We do not have to double the size of the Border Patrol to gain operational control of the border. But we are, in my opinion, approximately 5,000 Agents short of where we should be. NBPC would advocate that of this number, 1,500 be sent to the northern border which is woefully understaffed and the remaining 3,500 positions allocated to interior enforcement.
- Supervising staffing levels- The Border Patrol is an extremely top heavy organization with far too many layers of management and a convoluted chain of command. Although Congress has provided the funding to double the size of the Border Patrol we have not doubled the number of Agents at the border. Let me explain, the average large police department has one supervisor for every 10 officers. The Border Patrol has one supervisor for every 4 Agents. The Committee should mandate a 10:1 ratio and achieve it through attrition in the supervisory ranks. The second problem is that we have Agents doing duties like processing and transportation that could be handled more cost effectively by non-law enforcement personnel.

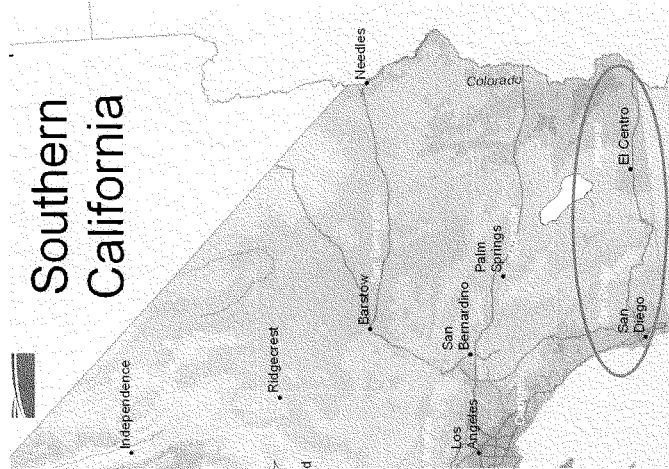
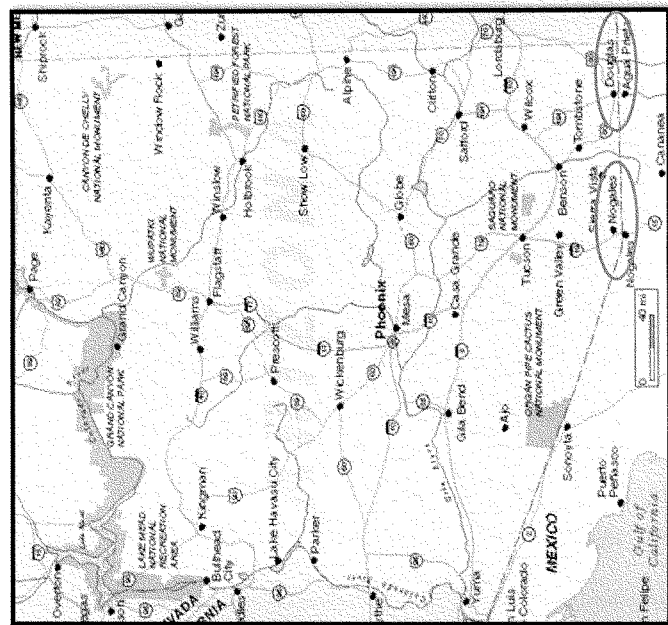
- Interior Enforcement- Every night we effectively play goal line defense because all of our resources and assets are concentrated right at the border instead of having a defense in depth. Let me give you an example, we have 7,000 Agents in Arizona and do you know how many Agents we have assigned to Phoenix, which is an important transit point for traffickers? The answer is zero. The Border Patrol's northernmost station in Arizona is Casa Grande, which is 50 miles south of Phoenix.
- Better training- During the buildup of the Border Patrol during the Bush Administration the Academy's duration was reduced from approximately 20 weeks to as little as 54 days if you spoke Spanish. This is simply not enough time to properly train an Agent and weed out those who are not up to the challenge. The Committee should require that the Academy revert back to 20 weeks.

Again, I want to thank the Committee for the opportunity to testify. If you have any questions I would be happy to answer them to the best of my ability.

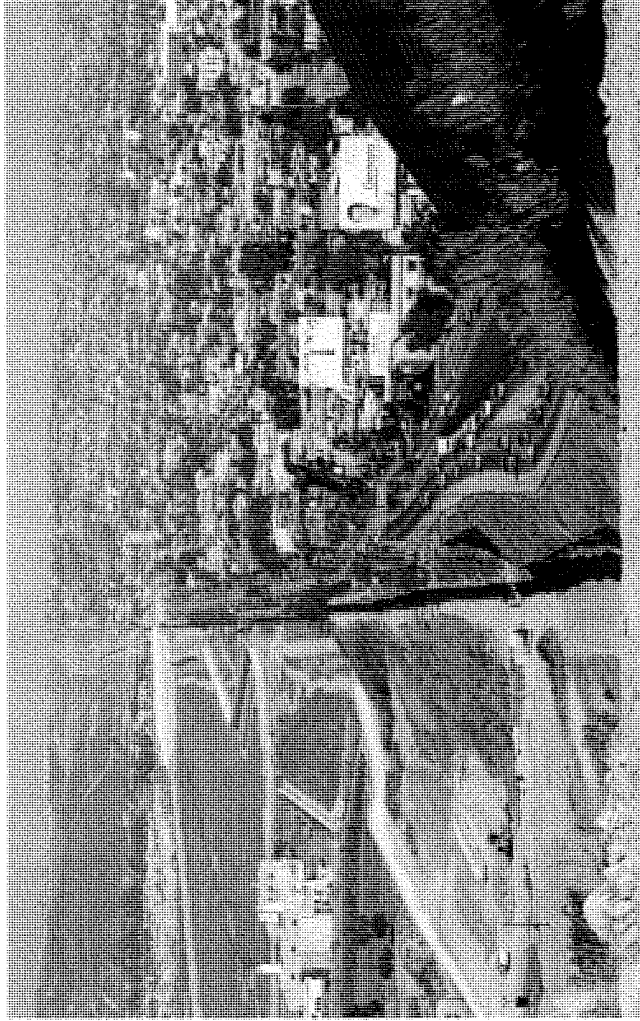
## Continental United States



**Border Fence Locations:  
San Diego, California (Imperial Beach)  
Douglas and Nogales, Arizona**



**Border Fence: San Diego, California (Imperial Beach)**



*To the right lies Tijuana, Baja California, and on the left is San Diego, California*

## **Border Fence: Douglas, Arizona**

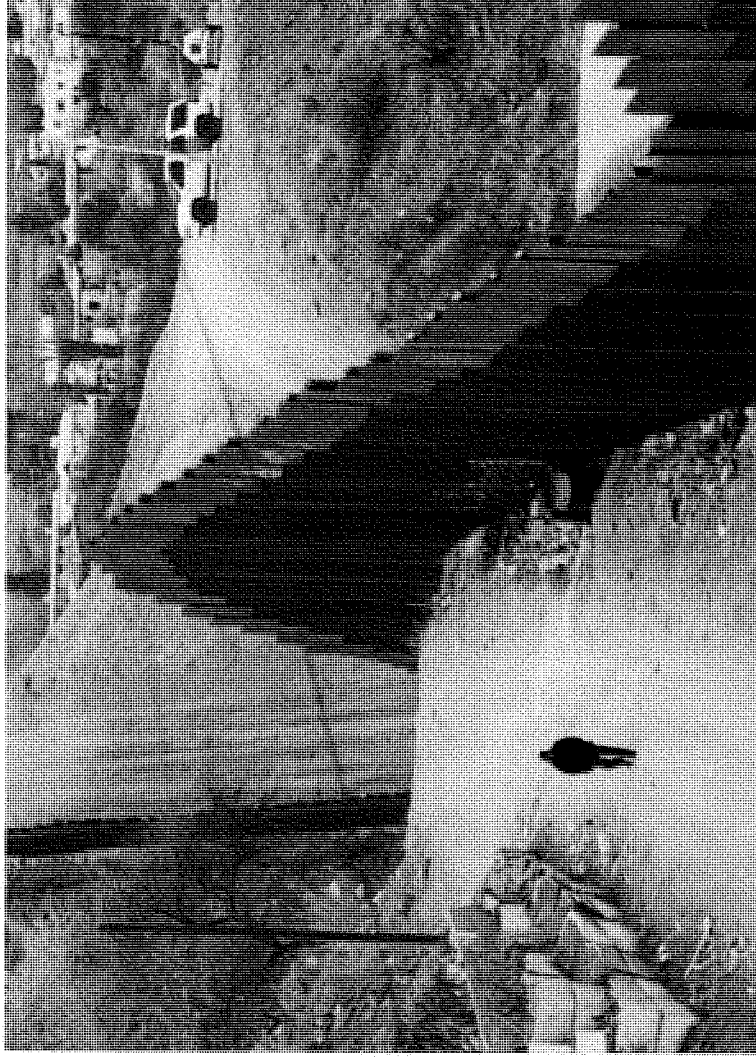


86

*U.S. Border Patrol vehicle patrolling the border fence in Douglas, Arizona*



**Border Fence: Nogales, Arizona**



*The fence at the border with a view of the houses of Nogales, Arizona*



## National Border Patrol: Border Coverage Breakdown

Northern Border: 3,987 linear miles

2,100 Agents - 525 Supervisors = **1,575** Deployable Agents  
1,575 Agents - 630 Agents (on leave: scheduled/sick) = **945** Agents<sup>88</sup>  
945 Agents - 47 Agents on Specialty Detail (non-border) = **898** Agents

**898** Agents on the border per day ÷ 3 shifts = **299** Agents per shift

3,987 linear miles ÷ 299 Agents  
= **13.5** miles of border per agent



## National Border Patrol: Border Coverage Breakdown

**Southern Border: 1,933 miles**

15,200 Agents - 1,500 Agents at checkpoints (non-patrol) = **13,700** Deployable Agents  
13,700 Agents - 3,425 Agents on Specialty Detail (non-border) = **10,275** Agents  
10,275 Agents - 4,110 Agents (on leave: scheduled/sick) = **6,165** Agents

89

**6,165** Agents on the border per day ÷ 3 shifts = **2,055** Agents per shift

1,933 miles ÷ **2,055** Agents  
= **0.94** miles of border per agent

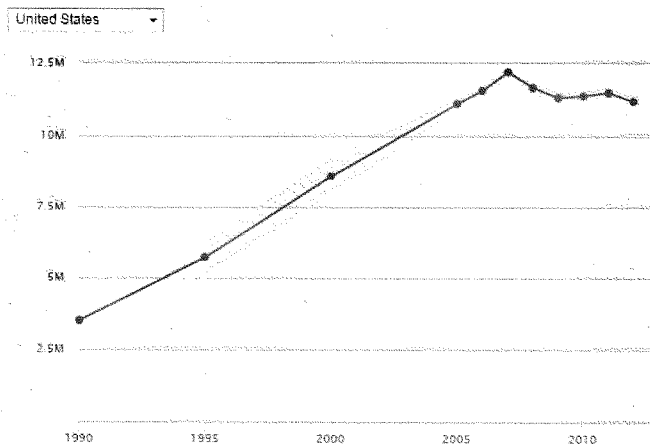
## Population estimates, in millions

Pew Research Center

| Year | Unauthorized Immigrants (in millions) |
|------|---------------------------------------|
| 2000 | 8.4                                   |
| 2001 | 9.3                                   |
| 2002 | 9.4                                   |
| 2003 | 9.7                                   |
| 2004 | 10.4                                  |
| 2005 | 11.1                                  |
| 2006 | 11.3                                  |
| 2007 | 12                                    |
| 2008 | 11.6                                  |
| 2009 | 11.1                                  |
| 2010 | 11.2                                  |
| 2011 | 11.1                                  |

## Unauthorized Immigrant Population Trends for States

Explore U.S. unauthorized immigrant population trends for states of residence, as well as for international regions and largest countries of birth, based on Pew Research Center estimates.



Note: Shading surrounding lines indicates low and high points of the estimated 90% confidence interval. White data markers for 2012 indicate that change since 2009 is statistically significant. Trends are plotted from unrounded numbers; data labels are rounded independently and are not adjusted to sum to the total U.S. figure or other totals.

Statement of

**Bo Cooper, Esq.**

Partner at Fragomen, Del Rey, Bernsen & Loewy LLP  
[ bcooper@fragomen.com ]

Before the

**United States Senate**

**Homeland Security and Governmental Affairs Committee**

**Hearing on Deferred Action on Immigration: Implications and Unanswered Questions  
February 4, 2015**

Thank you Chairman Johnson, Ranking Member Carper, and distinguished members of the Committee. I am grateful to have the opportunity to join you at this hearing and to try to contribute to the Committee's consideration of the critical questions at issue today.

My name is Bo Cooper. I am a partner at Fragomen, Del Rey, Bernsen, & Loewy LLP, an international immigration law firm. In recent years, I have taught immigration law at schools in Washington, D.C. and Michigan, including courses on immigration and national security, and on prosecutorial discretion and other key aspects of federal immigration enforcement policy. From 1999 up until the launch of the Department of Homeland Security in 2003, I served as General Counsel of the U.S. Immigration and Naturalization Service (INS). I served in this position during Administrations of both parties. At that time, the border enforcement, interior enforcement, and adjudications functions that are now distributed among the three separate DHS immigration agencies—U.S. Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS)—were all the combined responsibility of the agency whose legal function I oversaw.

Drawing on these three perspectives—public service, private practice, and academics—I will try today to help address some of the Committee's concerns about the implementation of the recent DHS directives on immigration, a set of administrative policies to enhance the effectiveness and rationality of the nation's immigration system. These measures are not a substitute for Congressional action, but they do represent an important first step in the process of reforming an outdated system that has suffered from legislative stalemate. While these directives touch on many areas of immigration policy, the issues that have garnered the most attention and concern are the expansion of the Deferred Action for Childhood Arrivals (DACA) program and the creation of the Deferred Action for Parents of Americans and Lawful Permanent Residents<sup>1</sup> (DAPA) program.

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<sup>1</sup> This program is also called Deferred Action for Parental Accountability. See U.S. Citizenship and Immigration Services, *Executive Actions on Immigration*, available at <http://www.uscis.gov/immigrationaction>.

This hearing raises questions that are key to a proper evaluation of the recent DHS directives. Policy makers must necessarily address the financial, logistical, enforcement, and security concerns surrounding any new or expanded program, especially one affecting a complex, crucial, and sensitive national policy priority like immigration. I hope to assuage some of the concerns that have been expressed in the congressional and other public debate over the DHS directives, including the expansion of DACA and the implementation of DAPA as part of an integrated series of initiatives announced by the Secretary of Homeland Security. I will focus my testimony on the following key points:

- The DACA and DAPA programs rest on solid legal and policy grounds. They represent a sensible and principled application of the prosecutorial discretion that DHS must exercise given the scope of the problems facing our nation's immigration system today, coupled with DHS's finite resources.
- DHS has the tools and capacity to handle implementation of these programs from a logistical, financial, and enforcement perspective. In meeting the challenges ahead, DHS is operating from the considerable advantage of having, with the 2012 implementation of DACA, a recent model and experience on which to base its current planning. DHS ran an effective initial rollout of DACA, and can use that experience and the several-month implementation period to prepare for the further expansion of DACA and the impending launch of DAPA. Moreover, DHS has designed these programs to present no cost to taxpayers and to be self-funded by the fees requestors must pay. These new and expanded programs are of course broader than DACA, but our immigration agencies are designed to have the flexibility to scale to evolving caseloads and demands.
- Based not only on this experience but also on decades of expertise, sharpened forcefully by the thinking, resources, and energy that have poured into the immigration function since the terror attacks of 2001 and the creation of DHS, the agency should be well-equipped to handle public safety or national security issues relating to the DACA and DAPA initiatives. DHS has long prioritized border enforcement, security, and the apprehension and removal of criminal aliens, just as Congress has specifically mandated. The DACA and DAPA programs are designed to help the agency further focus its resources in that regard.
- DHS's new policies should also strengthen public safety, as millions of undocumented individuals currently living and working outside the system will come forward. They will make their presence known, enter into federal law enforcement databases, and undergo background checks. DHS has strong measures in place to conduct national security and criminal background checks and detect fraud. DHS will be able to leverage its extensive and sophisticated screening experience in its implementation of the new DACA and DAPA programs.
- The enforcement prioritization reflected in the recent DHS directives represents an improvement to the administration of our country's outdated and insufficiently effective immigration system. These measures should not be viewed as usurping the congressional function. To the contrary, I believe that these actions serve up to Congress a set of

important improvements, made within the confines of existing law, to an immigration system that does not serve our national interest in the way that it must. But only Congress, through reforms enacted through the legislative process that has always been such a proud feature of the American political system, can change our laws so that immigration fuels American creativity, economic strength, and competitiveness to the maximum possible extent.

**I. Congress can reasonably debate whether DACA and DAPA are the right policy, but the programs rest on sound and well-established legal foundations.**

While the committee's focus at this hearing is properly on the logistical and security risks of DACA and DAPA, I believe it is useful to address briefly the strong legal underpinnings of those programs. In my opinion, DACA and DAPA were implemented with sound legal footing. The legal arguments supporting this position have been developed in depth in other fora, but it is helpful at the outset of this discussion to recall the programs' legal foundation.

Just as it is throughout law enforcement, prosecutorial discretion is a necessary and long-standing feature of our immigration system. The Supreme Court recently emphasized the breadth of prosecutorial discretion in the immigration context and summarized the myriad considerations that immigration authorities must balance in implementing immigration laws:

Discretion in the enforcement of immigration law embraces immediate human concerns. Unauthorized workers trying to support their families, for example, likely pose less danger than alien smugglers or aliens who commit a serious crime. The equities of an individual case may turn on many factors, including whether the alien has children born in the United States, long ties to the community, or a record of distinguished military service. Some discretionary decisions involve policy choices that bear on this Nation's international relations. Returning an alien to his own country may be deemed inappropriate even where he has committed a removable offense or fails to meet the criteria for admission. The foreign state may be mired in civil war, complicit in political persecution, or enduring conditions that create a real risk that the alien or his family will be harmed upon return. The dynamic nature of relations with other countries requires the Executive Branch to ensure that enforcement policies are consistent with this Nation's foreign policy with respect to these and other realities.<sup>2</sup>

Congress has also explicitly acknowledged or even required prosecutorial discretion in the immigration context in substantive statutes and in appropriations bills. DHS funding levels contemplate the removal of fewer than 400,000 of the approximately 11 million illegal immigrants in the United States each year, making the exercise of prosecutorial discretion a necessary and inherent feature of our immigration system. The DACA and DAPA programs are appropriate exercises of this prosecutorial discretion, and both initiatives will focus removal resources on the high priority cases that the Secretary has identified in light of Congress's direction and the interests of national security, border integrity, and public safety. In short, the

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<sup>2</sup> *Arizona v. United States*, 132 S. Ct. 2492, 2499 (2012).

programs enable DHS to focus on deporting those illegal immigrants who pose the most significant threats to American security.

The DACA and DAPA programs are part of DHS's broader focus on its mission to secure our nation's borders. In recent years, DHS has spent every penny of its budgeted funds involved with apprehending and deporting aliens, and there is no reason to believe that DACA or DAPA will affect this practice. In 2012, for instance, the federal government spent \$17.9 billion on immigration enforcement. This sum is more than the budgets of the FBI, DEA, ATF, Secret Service, and U.S. Marshals Service *combined*. There were more than 577,295 removals and returns in 2014,<sup>3</sup> and the number of people trying to cross our borders illegally is the lowest since the 1970s.<sup>4</sup> DHS is also deporting an increasing number of convicted criminals. These statistics indicate active enforcement—not abdication of legal duty.

DHS's use of the "deferred action" tool under DACA and DAPA is neither new nor unprecedented. Deferred action and similar programs with different nomenclature<sup>5</sup> have been a crucial part of immigration enforcement for more than 50 years. Presidents have granted deferred action or similar categorical discretionary relief in the past. Not only has Congress never moved to quash deferred action, but it has in fact explicitly recognized it by statute.<sup>6</sup> Deferred action has been mentioned in administrative regulations<sup>7</sup> and Supreme Court decisions.<sup>8</sup> Thus, every branch of the federal government has at least acknowledged if not encouraged the use of deferred action.

Finally, DHS's authority to issue work permits to recipients of deferred action is long-standing and clearly established. Since at least the 1980s, the former INS understood that the authority to decide which aliens would receive permission to work fell within the general discretionary authority of the agency.<sup>9</sup> Congress has also authorized the Secretary of Homeland Security to

<sup>3</sup> DHS Press Release, *DHS Releases End of Year Statistics* (Dec. 19, 2014), available at <http://www.dhs.gov/news/2014/12/19/dhs-releases-end-year-statistics>.

<sup>4</sup> White House Press Release, *Remarks by the President in Address to the Nation on Immigration* (Nov. 20, 2014), available at <http://www.whitehouse.gov/the-press-office/2014/11/20/remarks-president-address-nation-immigration>.

<sup>5</sup> Programs similar to DACA and DAPA include Deferred Enforced Departure, Extended Voluntary Departure, and Family Fairness.

<sup>6</sup> See, e.g., 8 U.S.C. § 1227(d)(2) ("The denial of a request for administrative stay of removal under this subsection shall not preclude the alien from applying for...deferred action."); 8 U.S.C. § 1154(a)(1)(D)(i)(II, IV) (citing individuals "eligible for deferred action").

<sup>7</sup> See, e.g., 8 C.F.R. § 109.1(b)(7) (1982) (allowing work permits for deferred action recipients).

<sup>8</sup> *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483-84 (1999). Lower court decisions have also referenced deferred action. See, e.g., *Mada-Luna v. Fitzpatrick*, 813 F.2d 1006 (9th Cir. 1987).

<sup>9</sup> See Office of Legal Counsel, U.S. Dept. of Justice, *The Department of Homeland Security's Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others* (Nov. 19, 2014) at 21 n. 11.



grant work permits,<sup>10</sup> and USCIS has granted such permits to deferred action recipients who demonstrate economic necessity to work.<sup>11</sup> Work authorization has also historically accompanied other temporary grants of relief from deportation.<sup>12</sup> Work authorization to DACA and DAPA recipients thus relies on the same authority that the Executive Branch has exercised for over 30 years. DACA and DAPA provide no special path to citizenship and no special Green Card for those recipients, only temporary permission to be present in this country, with work authorization if the recipients can show economic necessity. As DHS has repeatedly emphasized, a grant of deferred action can be revoked at any time.<sup>13</sup>

**II. DHS's prioritization under DACA and DAPA is a common sense, effective policy choice.**

As discussed above, our current immigration scheme inevitably requires the prioritization of limited enforcement resources. With current levels of DHS funding, the individuals who will receive deferred action under DACA or DAPA are unlikely to be deported even absent those programs. DACA and DAPA are, in a practical sense, a policy recognition of that reality. DHS's goal has long been to target criminals and national security threats over illegal but otherwise law-abiding immigrants, and DACA and DAPA are a more transparent framework to support that aim.

While DACA and DAPA establish threshold eligibility criteria, the grant of deferred action is an individualized determination based on case-by-case exercise of discretion. Secretary Johnson's memoranda outlining the initiatives set forth broad policy goals but also specifically instruct officers to make case-by-case determinations based on several non-exhaustive factors.<sup>14</sup> And the early DACA statistics suggest that USCIS is exercising precisely the type of individualized

<sup>10</sup> See 8 U.S.C. § 1324A(h)(3) (defining "unauthorized alien" to exclude aliens "authorized to be so employed by this Act or by the Attorney General" [now the Secretary of Homeland Security]).

<sup>11</sup> See 8 C.F.R. § 274a.12(c)(14).

<sup>12</sup> For example, in the aftermath of Hurricane Katrina, USCIS allowed F-1 visa holders who were displaced from their course of study by the devastation to apply for work authorization. See [http://www.uscis.gov/sites/default/files/files/pressrelease/F1Student\\_11\\_25\\_05\\_PR.pdf](http://www.uscis.gov/sites/default/files/files/pressrelease/F1Student_11_25_05_PR.pdf).

<sup>13</sup> See Memorandum from Jeh Charles Johnson, Secretary of Homeland Security, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents (Nov. 20, 2014) at 2.

<sup>14</sup> See Memorandum from Jeh Charles Johnson, Secretary of Homeland Security, Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants (Nov. 20, 2014) at 5-6; Memorandum from Jeh Charles Johnson, Secretary of Homeland Security, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents (Nov. 20, 2014) at 5.

decision making contemplated by the memoranda, with more than 38,000 denials through the end of 2014.<sup>15</sup>

DHS's prioritization is also consonant with the long-standing principle that America will gladly absorb talent and ambition from abroad while protecting its security interests. The DACA and DAPA programs will allow immigrants who have been present in our country for years, if not decades, to stop living in the shadows. Law enforcement officers have resoundingly supported this move, which will make immigrants who need help from police more likely to seek it and those who witness crimes more likely to provide information to the police. DACA and DAPA will help to break down walls of distrust between immigrant communities and the police officers who serve them, increasing security for all involved.<sup>16</sup>

The DACA and DAPA programs also represent a financially sound use of limited public resources. According to the Council of Economic Advisors, over the next 10 years these programs will conservatively raise the GDP by 0.4 percent, raise average wages for U.S.-born workers by 0.3 percent, cut federal deficits by \$25 billion, and have no impact on the likelihood of employment for U.S.-born workers.<sup>17</sup> To the contrary, the programs will eliminate the incentive that employers now have to hire unauthorized workers at low wages instead of hiring lawful workers. The Congressional Budget Office has confirmed the fiscal responsibility of DACA and DAPA, concluding recently that a bill to eliminate the programs would increase deficits by \$7.5 billion.<sup>18</sup> And as discussed below, DHS believes that the applicant fees are set at a level that will finance the expansion necessary to adjudicate them.

And while DACA and DAPA are good policy from a governmental efficacy standpoint, they will also have positive effects on those who given deferred action under the programs. DACA and DAPA recipients are not the people that most American citizens want to see deported, and there

<sup>15</sup> See Decl of Donald W. Neufeld, Doc. 130-11, *Texas v. United States*, Case No. 1-14-CV-00254 (S.D. Tex. Jan. 30, 2015) at ¶ 23. USCIS rejected a further 43,174 requests because they had a fatal flaw such as failure to submit the required fee or failure to sign the request. See *id.* at ¶¶ 14, 23.

<sup>16</sup> See, e.g., Amici Curiae Brief of Major Cities Chiefs Association, Police Executive Research Forum, and Individual Sheriffs and Police Chiefs in Opposition to Plaintiffs' Motion for Preliminary Injunction, Doc. 83-1, *Texas v. United States*, Case No. 1-14-CV-00254 (S.D. Tex. Jan. 12, 2015).

<sup>17</sup> At the upper bound, CEA estimates that these programs will raise GDP by 0.9 percent and shrink deficits by \$60 billion over the next ten years. See White House Council of Economic Advisers, *The Economic Effects of Administrative Action on Immigration*, Nov. 2014, available at [http://www.whitehouse.gov/sites/default/files/docs/cea\\_2014\\_economic\\_effects\\_of\\_immigration\\_executive\\_action.pdf](http://www.whitehouse.gov/sites/default/files/docs/cea_2014_economic_effects_of_immigration_executive_action.pdf).

<sup>18</sup> Congressional Budget Office, Letter Re: Budgetary Effects of Immigration-Related Provisions of the House-Passed Version of H.R. 240, An Act Making Appropriations for the Department of Homeland Security (Jan. 29, 2015), available at <https://www.cbo.gov/sites/default/files/cbofiles/attachments/hr240.pdf>.

are real fiscal, human, and societal tolls when an American child is separated from her undocumented mother through deportation proceedings. DACA and DAPA give a measure of safety to the citizen child to alleviate the fear that her undocumented mother will be sent to her country of origin despite the fact that she has lived in the United States for decades. No longer do undocumented but otherwise law-abiding immigrants have to fear that a call to report a crime against them will result in their own deportation. DACA and DAPA bear the mark of good policy not only because they improve our government but also because they enhance public safety, further our values as a Nation, and improve the lives of millions of human beings who, because of their long-standing residency and citizen or permanent resident children, are integrated into the fabric of American society.

### III. DHS is prepared to implement DACA and DAPA.

Throughout their history, the U.S. immigration agencies have had to adapt and react to policy shifts and evolving logistical demands. In addition to capacities built and lessons learned from that history, DHS here has a very specific, recent, and similar model on which to build in meeting the new challenges of DACA and DAPA implementation. I believe that the existing DACA program also can serve as a useful model from which the Committee can examine DHS's ability to succeed with new initiatives.

As of the end of 2014, USCIS had received more than 727,000 applications under DACA and had around 50,000 pending cases.<sup>19</sup> Estimates of the number of unauthorized immigrant youth vary, but one recent report puts the number at 1.2 million.<sup>20</sup> Thus, approximately 50-60 percent of eligible youth have applied for DACA relief under the existing program.

DAPA represents a challenge for DHS that is different in number but not in kind from the DACA program. While estimates vary concerning the number of potential DAPA recipients, a reasonable estimate is roughly 3.5 to 4 million.<sup>21</sup> I understand that DHS is prepared for a range of DAPA filing rates that may match that of DACA or be submitted at a different rate.<sup>22</sup> DHS

<sup>19</sup> See Decl of Donald W. Neufeld, Doc. 130-11, *Texas v. United States*, Case No. 1:14-CV-00254 (S.D. Tex. Jan. 30, 2015) at ¶ 23. See also USCIS, *Number of I-821D, Consideration of Deferred Action for Childhood Arrivals by Fiscal Year, Quarter, Intake, Biometrics and Case Status: 2012-2014 First Quarter*, available at <http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA-06-02-14.pdf>.

<sup>20</sup> Jeanne Batalova, Sarah Hooker, and Randy Capps, *DACA at the Two-Year Mark: A National and State Profile of Youth Eligible and Applying for Deferred Action*, Migration Policy Institute, Aug. 2014, at 1.

<sup>21</sup> See, e.g., Migration Policy Institute, Press Release, *MPI: As Many as 3.7 Million Unauthorized Immigrants Could Get Relief from Deportation under Anticipated New Deferred Action Program* (Nov. 20, 2014), available at <http://www.migrationpolicy.org/news/mpi-many-37-million-unauthorized-immigrants-could-get-relief-deportation-under-anticipated-new>.

<sup>22</sup> See U.S. Citizenship and Immigration Services, *Executive Actions on Immigration*, available at <http://www.uscis.gov/immigrationaction>.

has met the challenges of the DACA program with alacrity, and I see no reason why this success should not continue with the implementation of DAPA.

DHS is already taking steps to meet the logistical challenges posed by DAPA. DHS has chosen a site in Northern Virginia that will serve as the centralized processing location for DAPA. The agency prudently chose a site that was already leased by the government, was the right size for the project, was already furnished, and could be easily upgraded to meet its IT demands. While a typical acquisition of a space this size would take years and no existing site could accommodate the expansion of necessary personnel, DHS was able to secure the space in a matter of months. I understand that DHS has projected that it will hire approximately 700 permanent employees to process the DAPA and DACA applications, with an additional 200-300 contractors for surge support.

Finally, as with immigration adjudications generally, the law establishes a sensible model for funding the DAPA expansion. USCIS, which will primarily administer the adjudications function of the programs, is fee-funded by statute.<sup>23</sup> I understand that the fees that DACA and DAPA applicants will pay cost several hundred dollars each and are set at a level that will finance this expansion.<sup>24</sup> User fee authority has been a feature of funding immigration benefits since the late 1980s. Each Administration has worked with congressional appropriators over the past decades to carry out this authority in an efficient and effective manner to handle surges in application flow and to time the receipt of applicant fees with expenditures associated with the benefits sought. Congress and this Administration have the tools and experience necessary to make these programs financially sound and self-sustaining. In other words, the DAPA and DACA programs will be self-funding such that they will not cost taxpayers, and indeed will ultimately benefit them through the positive economic effects of DAPA and DACA.

#### **IV. DHS's implementation of DACA and DAPA increases public safety and strengthens our national security.**

In my view, DHS's implementation of DACA and DAPA stand to strengthen—not hinder—our national security interests. DACA and DAPA should not raise any national security issues outside the norm for the agency. DHS is accustomed to screening applicants for security concerns, and this process is a basic requirement for most visa approvals. At the moment, the illegal immigrant population is not subject to any background checks, but in applying for DACA and DAPA they will have to provide names, addresses, fingerprints and other personal history to DHS, which will conduct a robust security check.

<sup>23</sup> See 8 U.S.C. § 1356(m) (“[F]ees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services...[and] may also be set at a level that will recover any additional costs associated with the administration of the fees collected.”)

<sup>24</sup> See U.S. Citizenship and Immigration Services, *Executive Actions on Immigration*, available at <http://www.uscis.gov/immigrationaction>.

I understand that DACA and DAPA applicant fingerprints will be run through numerous law enforcement databases both within and outside DHS that contain information from local, state, and federal law enforcement agencies.<sup>25</sup> I also understand that applicant fingerprints will be run against TECS,<sup>26</sup> which provides information about ongoing investigations and warrants, as well as fraud alerts. A background check will also be run against the unified DHS watchlist.<sup>27</sup>

DHS also has robust anti-fraud measures in place that would be applied to the DACA and DAPA context. I understand that DHS is working with other countries to build a library of exemplar documents with which it can train its adjudicators to recognize fraudulent identity documents from abroad. I further believe that DHS plans to use the Immigrations and Customs Enforcement (ICE) forensics laboratory to verify the authenticity of suspect documents.

DHS has extensive experience in adjudicating each element of the DACA and DAPA applications. DHS has developed the capacity to confirm parent-child relationships through, for instance, the processing of hundreds of thousands of petitions for alien relative (I-130) forms each year. Similarly, DHS (and before it the INS) has made proof of residency determinations for decades. DHS has already applied this expertise to making such determinations in the hundreds of thousands of adjudicated DACA applications. I understand that DHS has processes in place to establish school enrollment and that the agency has received exemplar documents from school districts around the country. Finally, I understand that DHS has implemented the added measure of running birth certificates that it receives through the EVVE, a vital statistics database,<sup>28</sup> a process that DHS intends to continue in adjudicating DAPA applications.

I am also aware that DHS has robust internal processes to ensure that, if a criminal is identified through its adjudication of an application, the appropriate authorities are notified so that criminal prosecution and/or immigration removal proceedings can begin.<sup>29</sup> For this reason, I believe that the DACA and DAPA programs have positive criminal enforcement consequences. Indeed, DHS has already assisted law enforcement in locating criminals who applied for DACA benefits.<sup>30</sup>

**V. DACA and DAPA should not contribute to the number of illegal crossings over the southern border.**

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<sup>25</sup> These databases include IDENT, CJIS, the DOJ print index, and FBI holdings.

<sup>26</sup> See Privacy Impact Assessment for the TECS System: CBP Primary and Secondary Processing, available at <http://www.dhs.gov/xlibrary/assets/privacy/privacy-pia-cbp-tecs-sar-update.pdf>.

<sup>27</sup> I further understand that these checks will be run using any aliases or misspellings of the alien's name.

<sup>28</sup> The EVVE database is operated by the National Association for Public Health Statistics and Information Systems and is used by numerous federal agencies to validate birth and death records. See NAPHSIS, *About EVVE*, available at <http://www.naphsis.org/about-evve>.

<sup>29</sup> See Decl of Donald W. Neufeld, Doc. 130-11, *Texas v. United States*, Case No. 1:14-CV-00254 (S.D. Tex. Jan. 30, 2015) at ¶ 22.

<sup>30</sup> *Id.*

I do not believe that the presence of the DACA and DAPA programs will contribute to the number of illegal crossings at the United States-Mexico border. Applicants for DACA and DAPA must meet strict eligibility requirements. Both programs are only available for aliens who have been residing in the United States since 2010,<sup>31</sup> and, as discussed above, DHS rigorously assesses the evidence presented to verify that the applicant meets the criteria. DHS has redoubled its efforts to secure our southern border by increasing resources deployed there and prioritizing the return of recent border crossers.<sup>32</sup> This has been made possible in part by significant increases in border enforcement funding from Congress, for which there has been bipartisan support in numerous recent Budgets.

Those who have crossed illegally into the United States within the last five years are not eligible for DACA or DAPA, and DHS and the U.S. Department of State have launched an aggressive international campaign designed to dispel any potential misinformation concerning these new programs.<sup>33</sup> Congress and the Administration have the same objective here: avoiding the creation of false expectations about DACA/DAPA eligibility among those who might consider crossing illegally. As long as border enforcement remains at current levels and DACA and DAPA claims are adjudicated with care, the existence of these programs should not increase illegal immigration. Congress can properly exercise its oversight role to ensure that these enforcement and adjudication goals are met, and such actions by Congress should be welcomed by the Administration.

While it is essential to analyze whether DACA drove the uptick in unaccompanied children arriving at the southern border in the summer of 2014, the data do not indicate that it did.<sup>34</sup> Most importantly, the nationalities of the persons arriving in that flow are not consistent with the possibility that the flow was DACA-driven. Three of the top four origin countries for the arriving minors were Honduras, Guatemala, and El Salvador.<sup>35</sup> Crime and violence levels in

<sup>31</sup> USCIS, *Executive Actions on Immigration*, available at <http://www.uscis.gov/immigrationaction# DACA>.

<sup>32</sup> See DHS Press Release, *Remarks by Secretary of Homeland Security Jeh Johnson: "Border Security in the 21<sup>st</sup> Century" – As Delivered* (Oct. 9, 2014), available at <http://www.dhs.gov/news/2014/10/09/remarks-secretary-homeland-security-jeh-johnson-border-security-21st-century>; DHS Presentation, *Border Security in the 21<sup>st</sup> Century*, available at [http://www.dhs.gov/sites/default/files/publications/secretary/14\\_1009\\_s1\\_border\\_slide\\_508.pdf#page=1](http://www.dhs.gov/sites/default/files/publications/secretary/14_1009_s1_border_slide_508.pdf#page=1).

<sup>33</sup> See DHS Press Release, *Departments of State, Homeland Security Launch Executive Action on Immigration: Know the Facts Awareness Campaign* (Jan. 5, 2015), available at <http://www.dhs.gov/news/2015/01/05/departments-state-homeland-security-launch-executive-action-immigration-know-facts>.

<sup>34</sup> See Declaration of Michael Hoefer, *Texas v. United States*, Case No. 1-14-CV-00254 (S.D. Tex. Jan. 30, 2015) at ¶¶ 27-31.

<sup>35</sup> Before 2002, more than 75 percent of unaccompanied minor children came from Mexico; by 2014 that number had dropped to just 25 percent. See Muzaffar Chishti and Faye Hipsman, *Dramatic Surge in the Arrival of Unaccompanied Children Has Deep Roots and No Simple*

those countries are at a crisis point, and many of the children arriving at our border had already experienced violence or threats.<sup>36</sup> The data suggests that those external factors, rather than mistaken beliefs about potential legal benefits in the United States, drove the increases that we saw.<sup>37</sup> If it were otherwise, one would have expected a far steeper rise in the number of unaccompanied minors from Mexico and from Central American countries other than those with the greatest current levels of social unrest.

Another strong factor suggesting that DACA has not increased illegal immigration is the fact that the number of unauthorized immigrants in the United States has been roughly unchanged since 2009.<sup>38</sup> Even accounting for the recent increase in the number of unaccompanied minors, unauthorized migration is at its lowest point in the past 40 years. Over the past fifteen years and across the Clinton, Bush, and Obama administrations, the number of border patrol agents and technology dedicated to our southern border has reached unprecedented levels.<sup>39</sup> If anything, I believe that the DACA and DAPA programs strengthen our border security by allowing DHS to focus more of its resources on the border rather than on apprehending non-criminal individuals whose extended U.S. residence has tied them already into the fabric of our communities.

#### **VI. DACA and DAPA are a net fiscal benefit for our country.**

While my background is in immigration law rather than in the law of public benefits, certain top-line facts about the tax and benefits issues surrounding these immigration programs appear to

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*Solutions*, Migration Policy Institute (June 13, 2014), *available at* <http://www.migrationpolicy.org/article/dramatic-surge-arrival-unaccompanied-children-has-deep-roots-and-no-simple-solutions>.

<sup>36</sup> See *id.* (“[M]urder, poverty, and youth unemployment rates paint a bleak picture of conditions that children may face in Honduras, Guatemala, and El Salvador in particular. Rising gang violence in some of these countries has become an undeniable factor in many children’s decision to migrate. A recent UN High Commissioner for Refugees (UNHCR) study based on interviews with more than 400 unaccompanied minors found that 48 percent had experienced violence or threats by organized-crime groups, including gangs, or drug cartels, or by state actors in their home countries, and 22 percent reported experiencing abuse at home and violence at the hands of their caretakers.”).

<sup>37</sup> For instance, Honduras has the highest murder rate in the world. CNN, *Which countries have the world’s highest murder rates? Honduras tops the list* (Apr. 11, 2014), *available at* <http://www.cnn.com/2014/04/10/world/un-world-murder-rates/>.

<sup>38</sup> Jeffrey S. Passel, D’Vera Cohn, Jens Manuel Krogstad, and Ana Gonzalez-Barrera, *As Growth Stalls, Unauthorized Immigrant Population Becomes More Settled*, Pew Research Center (Sept. 3, 2014).

<sup>39</sup> See DHS Press Release, *Remarks by Secretary of Homeland Security Jeh Johnson: “Border Security in the 21<sup>st</sup> Century” – As Delivered* (Oct. 9, 2014), *available at* <http://www.dhs.gov/news/2014/10/09/remarks-secretary-homeland-security-jeh-johnson-border-security-21st-century>; DHS Presentation, *Border Security in the 21<sup>st</sup> Century*, *available at* [http://www.dhs.gov/sites/default/files/publications/secretary/14\\_1009\\_sl\\_border\\_slide\\_508.pdf#page=1](http://www.dhs.gov/sites/default/files/publications/secretary/14_1009_sl_border_slide_508.pdf#page=1).

allay the most commonly-expressed concerns regarding public assistance to DACA and DAPA recipients. According to the Council of Economic Advisors estimates, the growth in GDP fueled by the DACA and DAPA recipients will reduce the federal deficit by \$25 to \$60 billion over the next ten years.<sup>40</sup> CEA also estimates that wages of American workers will increase by 0.3%. This is because allowing undocumented immigrants to apply for temporary work permits will shrink the underground economy and help ensure that employers are paying all of their workers a fair wage. Unauthorized aliens and some Americans compete today for the same work. If most of these labor market participants are work authorized, there should be upward pressure on the wages paid in these occupations, and this will benefit U.S. workers pursuing those job opportunities.

Even before DACA, roughly 3.1 million undocumented immigrants were paying into the Social Security fund, contributing approximately \$100 billion into the fund in the past decade.<sup>41</sup> Illegal immigrants also contributed \$13 billion in payroll taxes to Social Security in 2010 with only \$1 billion in benefit payments.<sup>42</sup> One would expect these contribution numbers to rise substantially with the increase in the newly-legal workforce under DACA and DAPA, which would in turn increase the stability of the Social Security fund.<sup>43</sup>

While the Congressional Budget Office found that individuals with DAPA and DACA will be able to collect their earned wages under the Social Security system, it is important to note that Social Security and Medicare are earned benefits funded through workers' payroll taxes, with

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<sup>40</sup> White House Council of Economic Advisers, *The Economic Effects of Administrative Action on Immigration*, Nov. 2014, available at [http://www.whitehouse.gov/sites/default/files/docs/cea\\_2014\\_economic\\_effects\\_of\\_immigration\\_executive\\_action.pdf](http://www.whitehouse.gov/sites/default/files/docs/cea_2014_economic_effects_of_immigration_executive_action.pdf).

<sup>41</sup> Roy Germano, *Unauthorized Immigrants Paid \$100 Billion Into Social Security Over Last Decade*, Vice News (Aug. 4, 2014), available at <https://news.vice.com/article/unauthorized-immigrants-paid-100-billion-into-social-security-over-last-decade>. See also Marshall Fitz, Philip E. Wolgin, and Patrick Oakford, *Immigrants Are Makers, Not Takers*, Center for American Progress (Jan. 28, 2013), available at <https://www.americanprogress.org/issues/immigration/news/2013/02/08/52377/immigrants-are-makers-not-takers/>.

<sup>42</sup> Stephen Goss, Alice Wade, J. Patrick Skirvin, Michael Morris, K. Mark Bye, and Danielle Huston, Social Security Administration Actuarial Note, *Effects of Unauthorized Immigration on the Actuarial Status of the Social Security Trust Funds*, [http://www.ssa.gov/oact/NOTES/pdf\\_notes/note151.pdf](http://www.ssa.gov/oact/NOTES/pdf_notes/note151.pdf).

<sup>43</sup> See, e.g., The White House Blog, *CBO Report: Immigration Reform Will Shrink the Deficit and Grow the Economy* (June 18, 2013), available at <http://www.whitehouse.gov/blog/2013/06/18/cbo-report-immigration-reform-will-shrink-deficit-and-grow-economy>.



eligibility based on work history and taxes paid. DACA and DAPA recipients will receive those benefits only after they have worked and paid taxes for 10 years.<sup>44</sup>

Unlike American citizens or legal permanent residents, however, DACA and DAPA recipients will not be eligible to receive most public benefits such as CHIP, SNAP, TANF or health care through the state and federal exchanges.<sup>45</sup> Most importantly, the CBO found that the DAPA and DACA programs result in far greater revenues than spending, and eliminating those programs (as the House DHS spending bill requires) would result in an increase in the deficit of \$7.5 billion.<sup>46</sup>

There are strong reasons to believe that DACA and DAPA will only increase participation in the American tax system, by causing undocumented immigrants (many of whom are already working illegally in the United States) and their employers to pay payroll and income taxes.

## VII. Conclusion

In conclusion, I believe that the DHS directives rest on sound legal footing and constitute good policy for our nation, its citizens, and the undocumented immigrants whose lives it will improve. The DACA and DAPA programs will make our country safer, will improve our nation's finances, and will further help us to secure our borders. I thank the Committee for the opportunity to introduce testimony on these issues, and I look forward to answering the Committee's questions.

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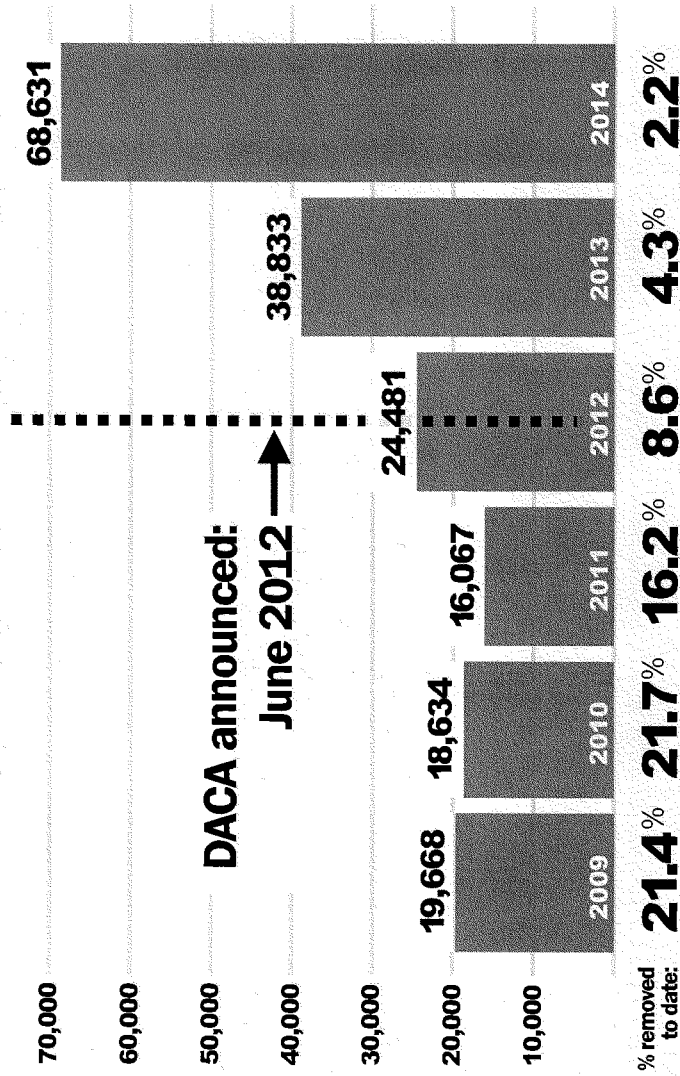
<sup>44</sup> National Immigration Law Center, *DACA and DAPA Access to Federal Health and Economic Support Programs* (Dec. 2014), available at <http://allianceforcitizenship.org/wp-content/uploads/2014/12/DAPA-DACA-and-fed-health-economic-supports.pdf>.

<sup>45</sup> National Immigration Law Center, *DACA and DAPA Access to Federal Health and Economic Support Programs* (Dec. 2014), available at <http://allianceforcitizenship.org/wp-content/uploads/2014/12/DAPA-DACA-and-fed-health-economic-supports.pdf>.

<sup>46</sup> Congressional Budget Office, Letter Re: Budgetary Effects of Immigration-Related Provisions of the House-Passed Version of H.R. 240, An Act Making Appropriations for the Department of Homeland Security (Jan. 29, 2015), available at <https://www.cbo.gov/sites/default/files/cbofiles/attachments/hr240.pdf>.

# UAC APPREHENSIONS

## UNACCOMPANIED CHILDREN CAUGHT AT BORDER



U.S. Border Patrol, U.S. Customs and Border Protection, Los Angeles Times

RON JOHNSON  
ILLINOIS

**ACTUARIAL NOTE**  
**Number 151**  
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**SOCIAL SECURITY ADMINISTRATION**  
**Office of the Chief Actuary**  
**Baltimore, Maryland**

**EFFECTS OF UNAUTHORIZED IMMIGRATION ON THE ACTUARIAL STATUS  
 OF THE SOCIAL SECURITY TRUST FUNDS**

*by Stephen Goss, Alice Wade, J. Patrick Skirvin, Michael Morris, K. Mark Bye, and Danielle Huston*

**INTRODUCTION**

This actuarial note provides information related to projections of the effects of unauthorized immigrants on the U.S. labor force, and more specifically on the actuarial status of the Social Security (OASI and DI) Trust Funds. We have been modeling this important, yet elusive, population for many years. We reported on these effects in a letter to Illinois Senator Dick Durbin in 2007 (copy available on request). The nature and characteristics of this population have changed over the last decade and so we have modified our methods to better account for work activity and potential benefit receipt by unauthorized immigrants. All estimates and analysis reflect the intermediate assumptions and methods developed for the 2012 Trustees Reports.

The balance of this note provides:

- A brief review of the nature of unauthorized immigration, how it has changed, and how our modeling has evolved;
- A detailed discussion of the effects of unauthorized immigration on Social Security's actuarial status;
- Answers to some important questions regarding undocumented immigrants; and
- A list of the major laws affecting both unauthorized immigrants and Social Security.

**A BRIEF REVIEW OF UNAUTHORIZED  
 IMMIGRATION**

Legal immigration into the United States has been a major source of population growth and diversity. For over a century, legal immigration has been regulated and the numbers of legal immigrants have been limited by a succession of laws. Unauthorized immigration into the U.S. results from entering the country without legal authorization and from overstaying temporary visas. Both forms of immigration have contributed substantially to the population, directly and indirectly. The indirect contribution refers to the fact that children born in the U.S. to these immigrants are U.S. citizens. For the purpose of this discussion, we use the following terms:

- *Legal immigrants* – U.S. residents born outside the U.S. who have been granted legal permanent resident (LPR) status or have become naturalized citizens.
- *Other immigrants* – U.S. residents born outside the U.S. who have not attained LPR status or citizenship (this group includes those with temporary legal visas).
- *Unauthorized immigrants* – *Other immigrants* residing in the U.S. without current papers documenting their legal status (i.e., either they entered the U.S. without legal documentation or they overstayed temporary visas).
- *Unauthorized workers* – *Other immigrants* working in the U.S. without current visas granting them authorization to work.

In the beginning of 1989, there were an estimated 5 million unauthorized immigrants in the U.S. The Immigration Reform and Control Act of 1986 (IRCA) allowed unauthorized immigrants who could prove they had been residing here for 5 years to apply for LPR status. From 1989 through 1991, about half of these unauthorized immigrants were granted LPR status under IRCA. Since the mid 1990's, however, the estimated number of persons entering the U.S. without authorization has averaged over 1 million per year, and the estimated number of unauthorized immigrants now totals more than 10 million. Individuals leave unauthorized status both by leaving the U.S. (emigration) and by applying for, and being granted, LPR status. In fact, about half of the individuals granted LPR status each year are estimated to come from the other immigrant population. Most of these individuals are residing as temporary legal immigrants with visas or have overstayed visas, rather than coming from the population that has never had temporary legal status.

In 2008, the Office of the Chief Actuary (OCACT) completely restructured the projection method for the other immigrant population. This restructuring had two objectives. The first was to model separately the annual flows of individuals: (1) entering the country in other immigrant status; (2) converting from other immigrant status

to LPR status; and (3) leaving the U.S. from the other immigrant population. The second objective was to reflect administrative changes made by the Social Security Administration (SSA) since 2001, which made it more difficult for unauthorized immigrants to obtain Social Security numbers (SSN) through illegitimate means. Since 2001, SSA greatly increased scrutiny of applications for an SSN after birth, which reduced the incidence of illegitimate receipt of an SSN. For other immigrants entering the U.S. in 2001 and earlier, we assume that about one-third attained apparently legitimate SSNs through illegitimate means. For unauthorized immigrants entering the country after 2001, we believe that the granting of SSNs based on illegitimate documentation has been greatly reduced.

Laws enacted in 1996 and 2004 make Social Security benefits unavailable to unauthorized immigrants residing in the U.S. and to any noncitizen without a work-authorized SSN at some point in time. We project that these laws will significantly reduce benefit receipt among persons who remain in the unauthorized immigrant population in the future.

#### **HOW THE PARTICIPATION OF UNAUTHORIZED WORKERS AFFECTS SOCIAL SECURITY'S FINANCIAL POSITION**

For the annual Trustees Reports, the President's Budget, and other documents, OCACT projects the numbers of unauthorized immigrants residing in the United States, their earnings, and the implications of these earnings on Social Security financing. Our projections assume that unauthorized residents work at about the same rate as the rest of the population by age and sex, but earnings are less likely to be reported as taxable and even less likely to be credited for future benefit entitlement. Thus, our projections suggest that the presence of unauthorized workers in the United States has, on average, a positive effect on the financial status of the Social Security program. For the year 2010,<sup>1</sup> we estimate that the excess of tax revenue paid to the Trust Funds over benefits paid from these funds based on earnings of unauthorized workers is about \$12 billion.

While we cannot determine the precise effect on Social Security financing of earnings of unauthorized immigrants, program data fully capture this effect. The current overall financial status of the Social Security Trust Funds is well known, and it provides an excellent base upon which to make projections for the future. The difficulty lies in determining what portion of total taxes paid to and benefits received from the Social Security Trust

Funds derive from the earnings of these immigrants. We can only estimate these amounts using the best available information.

Beyond the taxes paid and benefits received by unauthorized workers, the larger effect on the long-term actuarial status of the OASDI Trust Funds derives from the children born in the U.S. to these immigrants. These children are natural born citizens and add to the growth in the overall U.S. population. This contribution to future generations of workers is the largest part of the effect on the actuarial status both for legal and other immigrants.

#### ***Earnings of Unauthorized Immigrants in the United States***

The Census Bureau estimates that the number of people living in the U.S. who were foreign born and not U.S. citizens was 21.7 million in January 2009. Of these, 12.6 million individuals were not legal permanent residents of the U.S. We refer to this group as other immigrants (other than legal permanent resident immigrants). Of this number, about 10.8 million resided in the U.S. in an unauthorized status. The remaining other immigrants resided in the U.S. in a temporary authorized status (for example students and workers with temporary visas).

In order to make projections of the financial status of the Social Security program, OCACT projects the number of other immigrants who are working under various classifications. OCACT assumes that other immigrants are as likely to work as legal permanent residents of the same age and sex. The estimated number of other immigrants working is 8.3 million in 2010. OCACT estimates 0.6 million of the 8.3 million other immigrant workers in 2010 had temporary work authorized at some point in the past and have overstayed the term of their visas. In addition, OCACT estimates that 0.7 million unauthorized workers in 2010 obtained fraudulent birth certificates at some point in the past and these birth certificates allowed the workers to get an SSN. Combining these two groups with the 1.3 million current visa holders with temporary authorization, we estimate 2.7 million other immigrants have SSNs in their name and thus can work, pay taxes, and have earnings credited to their record for potential benefits in the future.

OCACT estimates 1.8 million other immigrants worked and used an SSN that did not match their name in 2010. Their earnings may be credited to someone else's record (when the SSN and name submitted to the employer match Social Security records) or may be credited to the Earnings Suspense File (when submitted with non-matching SSN and name). Finally, OCACT estimates 3.9 million other immigrants worked in the underground economy in 2010.

<sup>1</sup> January 1, 2010, is the starting year for the Social Security population projections. These estimates for 2010 rely on the most recent estimates from the Census Bureau and Department of Homeland Security at the time of preparation for the 2012 Trustees Report (November 2011).

Eliminating the current visa holders with temporary authorization (1.3 million other immigrants with legal work authorization), and those in the underground economy (3.9 million unauthorized workers), we estimate that there are about 3.1 million unauthorized immigrants working and paying Social Security taxes in 2010. With the average amount of OASDI taxable earnings for these immigrants assumed to be about 80 percent of the average level for all workers, we estimate \$13 billion in payroll taxes from unauthorized immigrant workers and their employers in 2010.

#### ***Benefits Based on Earnings by Unauthorized Immigrants***

Estimating the portion of all 2010 OASDI benefit payments that will be based on prior unauthorized earnings is even more problematic than estimating current unauthorized earnings. In general, we believe that the evidence indicates a relatively small portion of those who potentially could draw benefits do so.

The principal category of unauthorized immigrants who can currently draw a Social Security benefit includes those who have overstayed visas, or obtained an SSN through illegitimate means. For January 1, 2010, we estimate that there were 720 thousand other immigrants aged 62 and over. Assuming: (1) about 25 percent of these immigrants meet the insured requirements and have a functional SSN matching their name; and (2) they have a monthly benefit level about half the average, we estimate about 180 thousand beneficiaries received roughly \$1 billion in benefits in 2010.

Three additional categories of workers account for a relatively small amount of the total OASDI benefit payments. First, individuals who began receiving benefits before 1997 and never obtained authorization to work, could potentially be receiving benefits. However, they met the difficult challenge of documenting their past earnings and establishing the earnings as taxable. Second, individuals who never obtained authorization to work, received an SSN before 2004, and now live abroad could potentially receive a benefit. However, they would have similar challenges in documenting past earnings. Third, individuals who currently have authorization to work but did not have authorization while residing here in the past would find it difficult to document the earlier earnings. In each of these cases, the requirement to document ownership of reported taxable earnings in the past is a high hurdle, and meeting this requirement seems to be more the exception than the rule.

Overall, therefore, we estimate that about \$1 billion of OASDI benefit payments for 2010 derive from earnings in years where the worker was unauthorized.

#### ***Conclusion***

While unauthorized immigrants worked and contributed as much as \$13 billion in payroll taxes to the OASDI program in 2010, only about \$1 billion in benefit payments during 2010 are attributable to unauthorized work. Thus, we estimate that earnings by unauthorized immigrants result in a net positive effect on Social Security financial status generally, and that this effect contributed roughly \$12 billion to the cash flow of the program for 2010. We estimate that future years will experience a continuation of this positive impact on the trust funds.

While we expect the size of the unauthorized population to grow further in the future, several changes would limit the reporting of their earnings as taxable. Among these are issuance of SSNs at birth in recent years and greater scrutiny of birth certificates for individuals who only apply for SSNs at working ages. In addition, recent legislation requires that other immigrants receiving an SSN after 2003 cannot receive benefits unless the worker had legal work authorization at some point before retiring. Another recent change is the creation of a national-wide earnings verification system, which allows employers to check the legal status of their employees. While these changes will alter the future impact of earnings by unauthorized immigrants on the trust funds, we still expect significant effects that will benefit the financial status of the programs.

#### **ANSWERS TO SPECIFIC QUESTIONS ON UNAUTHORIZED IMMIGRATION**

##### ***Unauthorized workers in the U.S. and the Social Security system***

- **Question:** To what extent has the economic downturn (that began in 2007) changed immigration trends in the U.S.?

**Response:** The economic downturn did not affect the number of persons attaining legal immigrant status, as there are always more applicants than can be allowed under the legal limits. However, the downturn did affect the numbers of other immigrants entering and leaving the country. For the intermediate projection of the 2008 Trustees Report (these projections did not include the downturn), we assumed 1.5 million other immigrants

would enter the country in 2009. We now estimate that about 700 thousand other immigrants entered the country in 2009. In addition, due to the recession, we estimate that the number of other immigrants leaving the country was elevated in 2009, leaving only 40,000 net other immigrants for the year. We expect the effects of the recession on the number of other immigrants entering and leaving the country to be temporary. For 2015, we expect the number entering the country to return to 1.5 million and the net other immigration to be about 500,000.

- **Question:** What is the total number of unauthorized workers now participating in the U.S. economy? How has this number changed in the past and how will it change in the future?  
**Response:** We estimate that the number of unauthorized workers grew from 4.8 million in 2000 to 8.0 million in 2007, the peak of the last business cycle. The economy then fell into recession and the estimated number of unauthorized workers declined to 7.0 million in 2010. We project that the economy will recover and that the number of unauthorized workers will rise to 9.6 million in 2020.
- **Question:** What is the number of workers who are entering the country illegally? What is the number of workers who have overstayed their visas? How have these numbers changed?  
**Response:** The number of persons residing in the country without current legal authorization grew during the period 1990 to 2006 and the Department of Homeland Security (DHS) estimated the stock of unauthorized immigrants to be 11.8 million as of January 1, 2007. However, DHS estimated that this number declined to 10.8 million as of January 1, 2009. After the recovery from the recession, we assume the annual number of other immigrants (unauthorized and temporary visas) entering the U.S. will be 1.5 million per year. However, we assume that about one-third of those entering the country (largely those who have temporary visas or overstay temporary visas) will gain LPR status within a few years, and that the majority of the remaining 1 million other immigrants will eventually leave the country. We estimate the number of other immigrants who have entered the country legally with a temporary visa, have overstayed their visa (work or student), and are working using their legitimately acquired SSN to be 0.6 million in 2010, slightly above the 2000 level of 0.5 million.
- **Question:** How many of the unauthorized workers have an SSN issued in their name and how many are reporting earnings under invalid numbers?  
**Response:** Before 1980, many unauthorized work-

ers obtained SSNs in their name using fraudulent identification, particularly birth certificates. After 2001, however, SSA became far more vigilant on identification, and the number of persons obtaining SSNs with fraudulent identification should now be relatively small. We estimate 0.7 million unauthorized workers in 2010 were working using fraudulent identification (most with SSNs obtained before 2001), and we project this number to decrease to less than 0.2 million in 2040. Increasingly in the future, earnings reported to SSA for unauthorized workers will be reported with an illegitimate SSN. In this case, the reported earnings show up with a mismatch between name and SSN and thus would be assigned to the Earnings Suspense File. Due to this mismatch, the worker (and employer) would be paying payroll taxes, but the earnings would not be credited toward later receipt of benefits. Our estimate for the current stock of these immigrants is 1.8 million in 2010, rising to 3.4 million by 2040.

- **Question:** How many unauthorized workers are employed in the underground economy? How has this number changed in the past and how will it change in the future?  
**Response:** The estimated number of unauthorized workers who are employed in the underground economy grew from 2.2 million in 2000 to 3.9 million in 2010. We project the number of these workers to grow to 9.0 million in 2040.

#### *Wage reporting and wage levels*

- **Question:** Of the unauthorized workers paying OASDI taxes, what is the average level of earnings upon which the taxes are levied and how does that level compare with the broader U.S. labor force?  
**Response:** We assume the average level of taxable earnings for these unauthorized workers equals about 80 percent of the average level for all workers. For 2010, we estimate this average level for these unauthorized workers to be about \$34,000.
- **Question:** What is the dollar amount of payroll taxes paid by unauthorized workers and their employers for the latest tax year?  
**Response:** We estimate \$13 billion in OASDI payroll taxes from unauthorized immigrant workers and their employers in 2010. This number reflects earnings for those with no recorded SSN, those who have obtained an SSN with fraudulent identification, and those with legitimate SSNs who have overstayed temporary visas.
- **Question:** Does information in the Social Security Earnings Suspense File (ESF) provide insights into

unauthorized workers' labor force participation and earnings? What dollar amount or percentage of earnings in the ESF is the result of unauthorized work? How many items posted to the ESF are from unauthorized work? Since both legal and illegal workers may hold several jobs in any tax reporting year, how does that affect the estimate of unauthorized wage items and earnings reported by unauthorized workers?

**Response:** Viewing the history of the ESF, we attempt to separate the total dollar amount of taxable wages for each year between unauthorized workers and the rest of the population. However, because we cannot identify which individual "wage items" are for unauthorized immigrants and which are for legal residents, we have no way to determine specifically either the number of wage items reported per worker or the average total annual earnings per worker represented on the ESF. Historically, both the unauthorized population and the percent of total reported earnings that goes to the ESF have been rising and we estimate a continuation of these trends. We estimate earnings in the ESF for unauthorized immigrants will increase from less than 1 percent of total taxable payroll in 2000 to about 2 percent in 2040.

#### ***Benefits based on earnings by unauthorized workers***

- **Question:** How many unauthorized workers receive benefits from Social Security? How many fall under the category of overstayed visa or an SSN obtained through illegitimate means? What is their benefit level, their insured status, and the total amount of benefits they receive compared to authorized workers? What are the trends over time? How will these trends change in the future?

**Response:** Individuals who enter the country as unauthorized immigrants and remain in that status for life are relatively unlikely to receive benefits from the OASDI program. Those who work in the underground economy have no basis for expecting to be entitled for benefits. Those who have worked and paid payroll taxes without a matched SSN will have had their earnings placed in the suspense file and will have only a relatively remote possibility of obtaining credit for these earnings for the purpose of becoming entitled to a benefit. The relatively small and declining number of unauthorized immigrants who have an SSN with earnings credited in their name, may receive benefits in the

future. However, to receive benefits they must meet the following three conditions: (1) work long enough to acquire insured status under the program; (2) receive legal work authorization at some time; and (3) receive legal resident status for the time of their benefit entitlement or, if not, are willing to leave the U.S. to receive a benefit.

- **Question:** What categories of persons, who are or were unauthorized workers, may be eligible for benefits if they can document past earnings? To what degree are they successful in documenting such earnings?

**Response:** We estimate about 30 percent of the other immigrants who were living in the U.S. and were age 62 in 2000, would be eligible to receive retired-worker benefits. We project that the percent eligible to receive a retired-worker benefit will decline to around 10 percent at the end of the 75-year projection period. In addition, SSA authorized about 0.5 million checks to persons living abroad in December 2010. However, most of these individuals are U.S. citizens living abroad or persons receiving benefits under totalization agreements with other countries (based on authorized work).

#### **MAJOR LAWS AFFECTING UNAUTHORIZED IMMIGRATION AND SOCIAL SECURITY**

- *Immigration Reform and Control Act (IRCA) of 1986* allowed about 1/2 of the undocumented population in 1987 to become legal permanent residents over the period 1989-1991.
- Effective December 1, 1996, the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* prohibits SSA from paying monthly Title II benefits to noncitizens who are in the United States for any month during which they are not lawfully authorized to be in the country. After 2000, SSA became more vigilant in issuing SSNs. Since September 2002, SSA verifies noncitizens' immigration status with the Department of Homeland Security (DHS) before assigning an original SSN or issuing a replacement SSN card.
- The *Social Security Protection Act of 2004* restricts SSA from authorizing Title II benefits to noncitizen workers who received an original Social Security number (SSN) after January 1, 2004 unless they were issued an SSN for work purposes or were admitted into the United States as a nonimmigrant visitor for business or as an alien crewman.



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**STATEMENT OF THE AMERICAN IMMIGRATION COUNCIL**

**SUBMITTED TO THE U.S. SENATE HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS COMMITTEE**

**HEARING ON “DEFERRED ACTION ON IMMIGRATION: IMPLICATIONS AND  
UNANSWERED QUESTIONS”**

**FEBRUARY 3, 2014**

**Contact:**

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The American Immigration Council is a non-profit organization which for over 25 years has been dedicated to increasing public understanding of immigration law and policy and the role of immigration in American society. We write to share our analysis and research regarding the economic and other benefits of the Administration’s deferred action programs, Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parental Accountability (DAPA).

After decades of congressional neglect, in November 2014, President Obama took a crucial and courageous step toward reforming our immigration system. He announced that he will provide temporary relief for many of those impacted by our broken system.<sup>1</sup> Like his predecessors who took executive action on immigration,<sup>2</sup> President Obama is not providing a permanent legal status to anyone – only Congress can do that. But his action will provide benefits not only to those individuals who receive deferred action and their families, but to society as a whole.

<sup>1</sup> American Immigration Council, *A Guide to the Immigration Accountability Executive Action* (December 2014), at <http://www.immigrationpolicy.org/special-reports/guide-immigration-accountability-executive-action>.

<sup>2</sup> American Immigration Council, *Executive Grants of Temporary Immigration Relief, 1956-Present* (October 2014), at <http://www.immigrationpolicy.org/just-facts/executive-grants-temporary-immigration-relief-1956-present>; American Immigration Council, *Reagan-Bush Family Fairness: A Chronological History* (December 2014), at <http://www.immigrationpolicy.org/just-facts/reagan-bush-family-fairness-chronological-history>.

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Our recent report, *Only the Beginning: The Economic Potential of Executive Action on Immigration*, details those benefits.<sup>3</sup> (Attachment A) Those benefits include:

- The White House Council of Economic Advisers (CEA) estimates that the executive actions would, over the next 10 years, increase GDP by between 0.4 percent and 0.9 percent (\$90-\$210 billion), and decrease federal deficits between \$25 billion and \$60 billion.<sup>4</sup>
- The Center for American Progress (CAP) estimated that an executive action scenario in which 4.7 million unauthorized immigrants with a minor child in the United States received deferred action and work authorization would increase payroll tax revenues by \$2.9 billion in the first year, and up to \$21.2 billion over five years.<sup>5</sup>
- The Fiscal Policy Institute (FPI) estimates a 5 to 10 percent increase in wages over a five-year period for the almost 5 million workers potentially eligible to gain work authorization through expanded deferred action under the President's executive action.<sup>6</sup> Also, the CEA estimates that the executive actions would raise average wages for U.S.-born workers by 0.3 percent, or \$170 in today's dollars, over the next 10 years.<sup>7</sup>
- Moreover, the CEA anticipates that the executive actions would have no impact on employment of U.S.-born workers.<sup>8</sup> In other words, it is unlikely that the changes announced by President Obama would cause jobs to be taken away from native-born workers.

Additionally, an *amicus* brief submitted by the American Immigration Council and other organizations in pending litigation against the executive action, details stories of the other benefits of executive action to the United States and impacted individuals.<sup>9</sup> (Attachment B) These benefits include:

<sup>3</sup> American Immigration Council, *Only the Beginning: The Economic Potential of Executive Action on Immigration* (December 11, 2014), at <http://www.immigrationpolicy.org/just-facts/only-beginning-economic-potential-executive-action-immigration>. Statistics cited in this statement are provided therein.

<sup>4</sup> White House Council of Economic Advisers, "The Economic Effects of Administrative Action on Immigration" (Washington, DC: Executive Office of the President of the United States, November 2014), at [http://www.whitehouse.gov/sites/default/files/docs/cea\\_2014\\_economic\\_effects\\_of\\_immigration\\_executive\\_action.pdf](http://www.whitehouse.gov/sites/default/files/docs/cea_2014_economic_effects_of_immigration_executive_action.pdf).

<sup>5</sup> Patrick Oakford, "Administrative Action on Immigration Reform: The Fiscal Benefits of Temporary Work Permits" (Washington, DC: Center for American Progress, September 2014), p. 3, at <http://cdn.americanprogress.org/wp-content/uploads/2014/09/OakfordAdminRelief.pdf>.

<sup>6</sup> Fiscal Policy Institute, "President's Immigration Action Expected to Benefit Economy" (New York, NY: Fiscal Policy Institute, November 21, 2014), at <http://fiscalpolicy.org/presidents-immigration-action-expected-to-benefit-economy>; personal communication with David Dyssegaard Kallick, December 10, 2014.

<sup>7</sup> White House Council of Economic Advisers, note 4.

<sup>8</sup> White House Council of Economic Advisers, note 4.

<sup>9</sup> *Amici Curiae* Brief of American Immigration Council, American Immigration Lawyers Association, Define American, National Immigrant Justice Center, National Immigration Law Center, New Orleans Workers' Center For Racial Justice, Service Employees International Union, Southern Poverty Law Center, and United We Dream in Opposition to Plaintiffs' Motion For Preliminary Injunction, *Texas, et. al. v. United States, et. al.*, No. 14-cv-254,

- The ability to focus enforcement on lower-priority individuals.
- For those now eligible for DACA, the ability to support themselves through work, better pursue higher education, and follow their dreams.
- For those now eligible for DAPA, the ability to work and support their children who are U.S. citizens and lawful permanent residents.

We urge Congress to work to fix our broken immigration system and provide individuals, families and communities across America a functional system that meets our needs and reflects our proud history as a nation of immigrants.





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December 2014

### ONLY THE BEGINNING: THE ECONOMIC POTENTIAL OF EXECUTIVE ACTION ON IMMIGRATION

The series of executive actions on immigration which President Obama announced on November 20, 2014,<sup>1</sup> would have a beneficial—if modest—impact on the U.S. economy. Specifically, the president's actions are likely to increase Gross Domestic Product (GDP), reduce the federal deficit, and raise both tax revenue and average wages—all without having any appreciable impact on native-born employment. Most, though not all, of these economic gains would flow from two actions in particular: creation of a new Deferred Action for Parental Accountability (DAPA) program, which would grant temporary relief from deportation, as well as work authorization, to some unauthorized parents of U.S. citizens or lawful permanent residents; and expansion of the Deferred Action for Childhood Arrivals (DACA) program, which offers relief from deportation and work authorization to qualified young adults who were brought to the United States as children.<sup>2</sup> However, research suggests that comprehensive immigration reform legislation would yield even greater economic benefits than the programs created through executive action.<sup>3</sup>

#### Increasing GDP and Reducing the Deficit

- The White House Council of Economic Advisers (CEA) estimates<sup>4</sup> that the executive actions would, over the next 10 years, increase GDP by at least 0.4 percent (\$90 billion) or as much as 0.9 percent (\$210 billion).<sup>5</sup> The increase in GDP is the result of several factors:

“An expansion in the size of the American labor force by nearly 150,000 workers over the next ten years, largely as a result of higher labor force participation; and an increase in the productivity of American workers, both because of increased labor market flexibility and reduced uncertainty for workers currently in the United States and because of increased innovation from high-skilled workers.”<sup>6</sup>

- The CEA also estimates that the executive actions would lead to a decrease in federal deficits by somewhere between \$25 billion and \$60 billion over the next 10 years.<sup>7</sup>

#### Raising Tax Revenue

- The CEA estimates that the executive actions would expand the country's tax base by billions of dollars over the next 10 years. The CEA states that to the degree “the administrative actions increase tax compliance for undocumented workers, they would

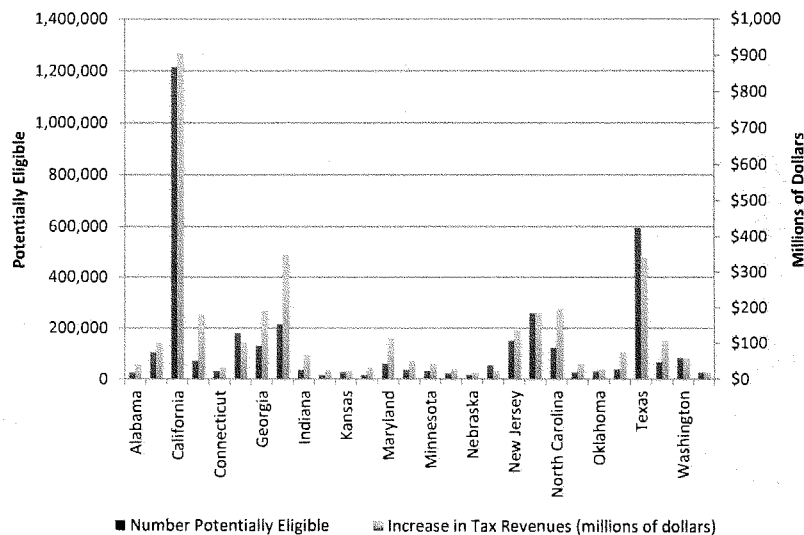
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raise additional revenue above and beyond the impact they would have on measured GDP, since undocumented workers are already contributing to GDP.”<sup>8</sup>

- The Center for American Progress (CAP) estimates that an executive action scenario in which 4.7 million unauthorized immigrants with a minor child in the United States received deferred action and work authorization would increase payroll tax revenues by \$2.9 billion in the first year, and up to \$21.2 billion over five years.<sup>9</sup>
- According to the North American Integration and Development (NAID) Center at the University of California, Los Angeles, deferred action for 3.8 million undocumented immigrants who are (1) the parents of minors who are U.S. citizens or legal permanent residents, or (2) eligible for the expanded DACA program, would result in new tax revenue of \$2.6 billion over the first two years.<sup>10</sup>
- Individual states would also experience tax gains as unauthorized immigrants begin to work legally and file taxes on slightly higher wages, according to CAP (Figure 1).<sup>11</sup>
- The Fiscal Policy Institute (FPI) found that the net gain from administrative relief in New York State could be around \$100 million per year in added state and local tax revenues.<sup>12</sup>

**Figure 1: Fiscal Benefits of Deferred Action Under the November 2014 Executive Action Announcement**



Source: Center for American Progress, “Topline Fiscal Impact of Executive Action Numbers for 28 States” (Washington, DC: Center for American Progress, November 2014). Center for American Progress analysis of data from the Institute for Taxation and Economic Policy and the Migration Policy Institute. Due to data limitations, estimates for all 50 states are not available.

### **Raising Average Wages**

- The CEA estimates that the executive actions would raise average wages for U.S.-born workers by 0.3 percent, or \$170 in today’s dollars, over the next 10 years.<sup>13</sup> CEA’s estimates of changes to native-born wages are based on their analysis of administrative changes related specifically to high-skilled immigration and deferred action. When examined separately, the deferred action component of administrative relief would increase the wages of all native-born workers by 0.1 percent on average by 2024.<sup>14</sup>
- CAP estimates wages would increase an average of 8.5 percent over one year for individuals potentially eligible for new and expanded deferred action.<sup>15</sup> Such individuals would see wage gains as they become eligible for work permits, find better job matches, and become less likely to be taken advantage of by employers.
- FPI estimates a 5 to 10 percent increase in wages over a five-year period for the almost 5 million workers potentially eligible to gain work authorization through expanded deferred action under the President’s executive action.<sup>16</sup>
- According to the NAID Center, deferred action for 3.8 million undocumented immigrants who are (1) the parents of minors who are U.S. citizens or legal permanent residents, or (2) eligible for the expanded DACA program, would result in an increase in labor income of \$7.1 billion over the first two years.<sup>17</sup>

### **No Impact on Native-Born Employment**

- The CEA also anticipates that the executive actions would have no impact on employment of U.S.-born workers. As they explain:
 

“Theory suggests that these policy changes would not have an effect on the long-run employment (or unemployment) rate...as the additional demand associated with the expanded economy would offset the additional supply of workers. Consistent with the theory, much of the academic literature suggests that changes in immigration policy have no effect on the likelihood of employment for native workers...Consequently, we estimate that these actions will have no effect on the likelihood of employment of native workers in the long run.”<sup>18</sup>
- In other words, it is unlikely that the changes announced by President Obama would cause jobs to be taken away from native-born workers. Empirical research has demonstrated repeatedly that there is no correlation between immigration and unemployment.<sup>19</sup> Immigrants—including the unauthorized—create jobs through their purchasing power and entrepreneurship, buying goods and services from U.S. businesses and creating their own businesses, both of which sustain U.S. jobs.<sup>20</sup> The presence of new

immigrant workers and consumers in an area spurs the expansion of businesses, which also creates new jobs.

- According to the NAID Center, deferred action for 3.8 million undocumented immigrants who are (1) the parents of minors who are U.S. citizens or legal permanent residents, or (2) eligible for the expanded DACA program, would result in 167,000 jobs created through an increase in direct, indirect, and induced employment over the first two years.<sup>21</sup> “Indirect employment” is a change in employment in one industry that is caused by a change in another as a result of interaction between the two. “Induced employment” is a change in employment based on changes in household spending (i.e., as wages increase, people have more money to spend, which supports more jobs).<sup>22</sup>

### Conclusion

Economic analyses estimate that the President’s executive actions on immigration—particularly expanding deferred action—would have modest positive fiscal and economic impacts at the national, state, and local levels through increases in tax revenue and average wages. Additionally, the President’s executive actions include many other components related to high-skilled immigrants and their spouses, employment-based immigration, encouraging entrepreneurship and innovation, expanding optional practical training for foreign students graduating from U.S. universities, exploring ways to modernize the visa system, and creating welcoming communities. Such changes are also expected to have a positive economic impact. Research shows that the entire package of executive actions would raise average wages for U.S.-born workers and have no impact on their employment prospects. However, congressional action on comprehensive immigration reform holds the promise of much greater economic benefits both nationally and locally.<sup>23</sup>

### Endnotes

<sup>1</sup> American Immigration Council, *A Guide to the Immigration Accountability Executive Action* (Washington, DC: American Immigration Council, November 2014).

<sup>2</sup> According to the White House, almost 5 million unauthorized immigrants would be impacted by these changes. Office of the Press Secretary, “Fact Sheet: Immigration Accountability Executive Action” (Washington, DC: The White House, November 20, 2014). A recent analysis from the Migration Policy Institute estimates that as many as 3.7 million unauthorized immigrants could get relief from deportation under a new Deferred Action for Parental Accountability (DAPA) program. With the expanded Deferred Action for Childhood Arrivals (DACA) program included, which could include up to 1.5 million people, anticipated actions could benefit more than 5.2 million people in total—nearly half of the unauthorized population in the United States. Migration Policy Institute, “MPI: As Many as 3.7 Million Unauthorized Immigrants Could Get Relief from Deportation under Anticipated New Deferred Action Program” (Washington, DC: Migration Policy Institute, November 20, 2014). The Pew Research Center estimates that a smaller number of people—around 3.9 million—could be affected by the administrative actions of DAPA and DACA. Specifically, they estimate that around 700,000 parents with U.S.-born children over age 18 who have lived in the country at least 5 years, around 2.8 million parents with U.S.-born children under age 18 who have lived in the country at least 5 years, and around 300,000 people potentially eligible for expanded DACA—a total of 3.9 million—could benefit from the deferred action components of executive action. Jens Manuel Krogstad and Jeffrey S. Passel, “Those from Mexico will benefit most from Obama’s executive action” (Washington, DC: Pew Research Center, November 20, 2014).

<sup>3</sup> American Immigration Council, “The Power of Reform: CBO Report Quantifies the Economic Benefits of the Senate Immigration Bill” (Washington, DC: American Immigration Council, 2013).

- <sup>4</sup> White House Council of Economic Advisers, *The Economic Effects of Administrative Action on Immigration* (Washington, DC: Executive Office of the President of the United States, November 2014), p. 2. Note: Estimates are based on the economic literature, including (wherever possible) the methods and studies that the Congressional Budget Office employed in its analysis of Senate immigration bill S.744 in June 2013. Specifically, overall estimates of the economic impact of administrative action on immigration are based on the following set of actions included in the President's announcement: providing deferred action to low-priority individuals with significant family ties; expanding immigration options for foreign entrepreneurs who have created American jobs or attracted significant investments; extending on-the-job training for science, technology, engineering, and mathematics (STEM) graduates of U.S. universities through reforms to the existing Optional Practical Training (OPT) program; providing work authorization to spouses of individuals with H-1B status who are on the path to Legal Permanent Resident (LPR) status; and providing portable work authorization for high-skilled workers awaiting processing of LPR applications.
- <sup>5</sup> White House Council of Economic Advisers, *The Economic Effects of Administrative Action on Immigration* (Washington, DC: Executive Office of the President of the United States, November 2014), p. 7.
- <sup>6</sup> *Ibid.*, p. 2.
- <sup>7</sup> *Ibid.*, p. 12.
- <sup>8</sup> *Ibid.*, p. 12.
- <sup>9</sup> Patrick Oakford, *Administrative Action on Immigration Reform: The Fiscal Benefits of Temporary Work Permits* (Washington, DC: Center for American Progress, September 2014), p. 3.
- <sup>10</sup> Raul Hinojosa-Ojeda and Maksim Wynn, *From the Shadows to the Mainstream: Estimating the Economic Impact of Presidential Administrative Action and Comprehensive Immigration Reform -- Special Update* (Los Angeles, CA: North American Integration and Development Center, University of California-Los Angeles, November 2014); personal communication with Raul Hinojosa-Ojeda, December 10, 2014.
- <sup>11</sup> Center for American Progress, "Topline Fiscal Impact of Executive Action Numbers for 28 States" (Washington, DC: Center for American Progress, November 2014).
- <sup>12</sup> Fiscal Policy Institute, "President's Immigration Action Expected to Benefit Economy" (New York City, NY: Fiscal Policy Institute, November 21, 2014).
- <sup>13</sup> White House Council of Economic Advisers, *The Economic Effects of Administrative Action on Immigration* (Washington, DC: Executive Office of the President of the United States, November 2014), p. 11.
- <sup>14</sup> *Ibid.*, p. 11.
- <sup>15</sup> Patrick Oakford, *Administrative Action on Immigration Reform: The Fiscal Benefits of Temporary Work Permits* (Washington, DC: Center for American Progress, September 2014), p. 3.
- <sup>16</sup> Fiscal Policy Institute, "President's Immigration Action Expected to Benefit Economy" (New York, NY: Fiscal Policy Institute, November 21, 2014); personal communication with David Dyssegaard Kallick, December 10, 2014.
- <sup>17</sup> Raul Hinojosa-Ojeda and Maksim Wynn, *From the Shadows to the Mainstream: Estimating the Economic Impact of Presidential Administrative Action and Comprehensive Immigration Reform -- Special Update* (Los Angeles, CA: North American Integration and Development Center, University of California-Los Angeles, November 2014); personal communication with Raul Hinojosa-Ojeda, December 10, 2014.
- <sup>18</sup> White House Council of Economic Advisers, *The Economic Effects of Administrative Action on Immigration* (Washington, DC: Executive Office of the President of the United States, November 2014), p. 9.
- <sup>19</sup> Rob Paral and Associates, *Untying the Knot: Parts I, II, and III* (Washington, DC: Immigration Policy Center, American Immigration Law Foundation, 2009).
- <sup>20</sup> Marcia Hohn, *Immigrant Entrepreneurs: Creating Jobs and Strengthening the Economy* (Washington, DC: U.S. Chamber of Commerce & American Immigration Council, January 2012).
- <sup>21</sup> Raul Hinojosa-Ojeda and Maksim Wynn, *From the Shadows to the Mainstream: Estimating the Economic Impact of Presidential Administrative Action and Comprehensive Immigration Reform -- Special Update* (Los Angeles, CA: North American Integration and Development Center, University of California-Los Angeles, November 2014); personal communication with Raul Hinojosa-Ojeda, December 10, 2014.
- <sup>22</sup> Raul Hinojosa-Ojeda and Maksim Wynn, *From the Shadows to the Mainstream: Estimating the Economic Impact of Presidential Administrative Action and Comprehensive Immigration Reform* (Los Angeles, CA: North American Integration and Development Center, University of California-Los Angeles, November 2014), p. 18.
- <sup>23</sup> American Immigration Council, "The Power of Reform: CBO Report Quantifies the Economic Benefits of the Senate Immigration Bill" (Washington, DC: American Immigration Council, 2013).





UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

|                                           |   |                        |
|-------------------------------------------|---|------------------------|
| _____                                     | ) |                        |
| STATE OF TEXAS, <i>et al.</i> ,           | ) |                        |
|                                           | ) |                        |
| Plaintiffs,                               | ) |                        |
|                                           | ) | CASE No. 1:14-CV-00254 |
| v.                                        | ) |                        |
|                                           | ) |                        |
| UNITED STATES OF AMERICA, <i>et al.</i> , | ) |                        |
|                                           | ) |                        |
| Defendants.                               | ) |                        |
| _____                                     | ) |                        |

AMICI CURIAE BRIEF OF AMERICAN IMMIGRATION COUNCIL, AMERICAN  
IMMIGRATION LAWYERS ASSOCIATION, DEFINE AMERICAN, NATIONAL  
IMMIGRANT JUSTICE CENTER, NATIONAL IMMIGRATION LAW CENTER, NEW  
ORLEANS WORKERS' CENTER FOR RACIAL JUSTICE, SERVICE EMPLOYEES  
INTERNATIONAL UNION, SOUTHERN POVERTY LAW CENTER,  
AND UNITED WE DREAM IN OPPOSITION TO PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION

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### INTRODUCTION AND SUMMARY OF ARGUMENT

*Amici* American Immigration Council, American Immigration Lawyers Association, Define American, National Immigrant Justice Center, National Immigration Law Center, New Orleans Workers' Center for Racial Justice, Service Employees International Union, Southern Poverty Law Center, and United We Dream oppose Plaintiffs' request for a preliminary injunction against Defendants' new deferred action initiative. The initiative, which is described in Secretary Jeh Johnson's November 20, 2014 memorandum (Defendants' Exhibit 7), and referred to below as the "Deferred Action Initiative," should be instituted without delay.

In this brief, *amici* supplement Defendants' brief by presenting information within their expertise that supports Defendants' position on the harms that an injunction would cause and where the public interest lies. *Amici* demonstrate that the Deferred Action Initiative promises to have significant and widespread benefits to the U.S. economy, raising wages, increasing tax revenue, and creating new jobs. In addition, *amici* show the benefits of the Deferred Action Initiative to individual immigrants, their families, and the communities in which they play an integral role.

### STATEMENT OF THE NATURE AND STAGE OF THE PROCEEDING

The parties to this case have addressed the nature and stage of the proceeding in their motion and opposition. *Amici* do not agree with all of their statements, but address only two key issues here. First, as Defendants have explained, the U.S. Department of Homeland Security ("DHS") maintains prosecutorial discretion under the Deferred Action Initiative to decide on a case-by-case basis whether to grant any particular individual's request. Dkt. 38 at 12, 40-41. Plaintiffs are incorrect that DHS simply rubber stamps Deferred Action for Childhood Arrivals ("DACA") requests. According to the latest statistics, almost six percent of DACA applications

were denied. *Id.* at 41. (It is hardly surprising that more than 90 percent of DACA applications are approved, as individuals with stronger equities have a greater incentive to pay the DACA application fee and identify themselves to the very government agency empowered to initiate removal proceedings.) In the experience of *amici*, many of whom have been integrally involved in advising DACA applicants and their lawyers, some DACA denials are based solely on prosecutorial discretion. That is, individuals who meet all of the DACA eligibility requirements are still denied deferred action. Indeed, the DHS National Standard Operating Procedures for DACA contain a form used for denial of DACA applications that includes a box specifically allowing denials on the basis of discretion: “You do not warrant a favorable exercise of prosecutorial discretion because of other concerns.”<sup>1</sup>

Second, all of the individuals who are eligible for the Deferred Action Initiative will have been in the country for at least five years. Dkt. 38 at 11. Accordingly, there is no reason to believe that this initiative will lead to a wave of new entries. Indeed, following implementation of the initial DACA program, unauthorized immigration to the United States declined slightly and the average length of time that undocumented immigrants in the country have been here has increased.<sup>2</sup>

#### STATEMENT OF THE ISSUES TO BE RULED UPON BY THE COURT

*Amici* agree with Defendants’ presentation of the issues before the Court. *See* Dkt. 38 at 12-13.

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<sup>1</sup> The form is Appendix F on page 249, and is available at: <http://legalactioncenter.org/sites/default/files/DACA%20Standard%20Operating%20Procedures.pdf>.

<sup>2</sup> Pew Research, *As Growth Stalls, Unauthorized Immigrant Population Becomes More Settled*, available at: <http://www.pewhispanic.org/2014/09/03/as-growth-stalls-unauthorized-immigrant-population-becomes-more-settled/>.

### ARGUMENT

*Amici* demonstrate below that a preliminary injunction would harm the U.S. economy, as well as individuals who would otherwise be granted deferred action, their families, and their communities. Incurring this harm would also be against the public interest.

#### I. The Requested Injunction Would Harm The Economy

Numerous studies by the government, think-tanks, non-profit advocacy organizations, and academic researchers have shown that granting deferred action to the individuals covered by the November 20, 2014 executive action on immigration would have beneficial effects on the U.S. economy and U.S. workers. Temporary work authorization for those immigrants who are eligible for deferred action will raise not only their wages, but the wages of all Americans, which will in turn increase government tax revenue and create new jobs.

The overwhelming consensus of economists is that immigration has a positive impact on the U.S. economy. For instance, Dr. Giovanni Peri has concluded that “immigrants expand the U.S. economy’s productive capacity, stimulate investment, and promote specialization that in the long run boosts productivity,” and that “there is no evidence that these effects take place at the expense of jobs for workers born in the United States.”<sup>3</sup> Because immigrants and native-born workers tend to fill different kinds of jobs that require different skills, they complement each

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<sup>3</sup> Giovanni Peri, *The Effect of Immigrants on U.S. Employment and Productivity*, FRBSF Econ. Letter 2010-26, Aug. 30, 2010, <http://www.frbsf.org/economic-research/publications/economic-letter/2010/august/effect-immigrants-us-employment-productivity>; see also Jack Strauss, *Does Immigration, Particularly Increases in Latinos, Affect African American Wages, Unemployment and Incarceration Rates?*, Dec. 8, 2012, available at Social Science Research Network, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2186978](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2186978) (finding that cities with higher levels of immigration from Latin America experience lower unemployment rates, lower poverty rates, and higher wages among African Americans).



other rather than compete.<sup>4</sup> This increases the productivity, and therefore the wages, of native-born workers.<sup>5</sup> Further, the increased spending power of both immigrants and native-born workers bolsters U.S. businesses, which are then able to invest in new ventures. The end result is more jobs for more workers, as well as upward pressure on wages created by higher demand for labor.<sup>6</sup>

Deferred action and temporary work authorization would amplify the positive impact that immigration has on the U.S. economy. As the White House Council of Economic Advisors (“CEA”) explains, “better task specialization and occupational reallocation as a result of work authorization for undocumented workers granted deferred action would allow for greater productivity – and thus higher wages – for native workers as well.”<sup>7</sup> Although small, the benefits for native-born American workers are real. CEA estimates the wage gains to be 0.3

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<sup>4</sup> Giovanni Peri, *supra* n.3; *see also* Heidi Shierholz, *Immigration and Wages: Methodological advancements confirm modest gains for native workers*, at 10-11 (Econ. Policy Inst., Briefing Paper No. 255, 2010), <http://www.epi.org/files/page/-/bp255/bp255.pdf>; Gianmarco I.P. Ottaviano and Giovanni Peri, *Rethinking the Effects of Immigration on Wages*, at 3-4 (Nat’l Bureau of Econ. Research, Working Paper No. 12497, 2006, revised 2008), <http://www.nber.org/papers/w12497.pdf>; Michael Greenstone and Adam Looney, *Ten Economic Facts About Immigration*, at 5 (The Hamilton Project, Brookings Inst., Policy Memo, 2010).

<sup>5</sup> Giovanni Peri, *supra* n.3; *see also* Heidi Shierholz, *supra* n.4, at 19 (estimating that, from 1994 to 2007, immigration increased the wages of native-born workers by 0.4 percent); Gianmarco I.P. Ottaviano and Giovanni Peri, *supra* n.4, at 4 (estimating that, from 1990 to 2004, immigration increased the wages of native-born workers by 0.7 percent); Michael Greenstone and Adam Looney, *supra* n.4, at 5.

<sup>6</sup> Giovanni Peri, *Rethinking the Effects of Immigration on Wages: New Data and Analysis from 1990-2004*, 5 *Immigration Policy In Focus*, No. 8, at 1 (American Immigration Law Foundation (now, American Immigration Council), Oct. 2006), <http://www.immigrationpolicy.org/sites/default/files/docs/IPC%20Rethinking%20Wages,%2011-2006.pdf>; White House Council of Economic Advisors (“CEA”), *The Economic Effects of Administrative Action on Immigration*, at 9 (Nov. 2014), available at [http://www.whitehouse.gov/sites/default/files/docs/cea\\_2014\\_economic\\_effects\\_of\\_immigration\\_executive\\_action.pdf](http://www.whitehouse.gov/sites/default/files/docs/cea_2014_economic_effects_of_immigration_executive_action.pdf).

<sup>7</sup> CEA, *The Economic Effects of Administrative Action on Immigration*, *supra* n.6, at 9.

percent over the next ten years as a result of all of the executive actions (including that concerning highly-skilled workers); 0.1 percent of these gains is attributable to deferred action.<sup>8</sup>

The federal government, as well as state and local governments, will enjoy higher tax revenues as a result of the Deferred Action Initiative. Not only will previously unauthorized workers be brought into the formal workforce, with much higher rates of tax compliance, but they will also be able to obtain better jobs and earn higher wages. Estimates vary, but all agree that the effect on tax revenue will be substantial. The North American Integration and Development Center (“NAID”) at the University of California, Los Angeles, estimates that if 3.8 million people are eligible to receive deferred action, tax revenues would increase by approximately \$2.6 billion over the first two years.<sup>9</sup> Similarly, the Center for American Progress (“CAP”) estimates that if 4.7 million individuals are eligible to receive deferred action, payroll tax revenues will increase by \$2.87 billion in the first year and \$21.24 billion over the first five years.<sup>10</sup> The effects on individual states are striking. For instance, CAP estimates that in Texas

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<sup>8</sup> *Id.* at 9-11; *see also* U.S. Chamber of Commerce, *Immigration Myths and Facts*, at 4-5 (2013), available at

[https://www.uschamber.com/sites/default/files/legacy/reports/Immigration\\_MythsFacts.pdf](https://www.uschamber.com/sites/default/files/legacy/reports/Immigration_MythsFacts.pdf). (discussing 10-year projections (2010-2020) for retirement and economic growth, which make immigration “invaluable” in sustaining the U.S. work force).

<sup>9</sup> Dr. Raul Hinojosa-Ojeda with Maksim Wynn, *From the Shadows to the Mainstream: Estimating the Economic Impact of Presidential Administrative Action and Comprehensive Immigration Reform*, Appendix A at 32 (NAID, Nov. 21, 2014), [http://www.naid.ucla.edu/uploads/4/2/1/9/4219226/ucla\\_naid\\_center\\_report\\_-\\_estimating\\_the\\_economic\\_impact\\_of\\_presidential\\_administrative\\_action\\_and\\_comprehensive\\_immigration\\_reform.pdf](http://www.naid.ucla.edu/uploads/4/2/1/9/4219226/ucla_naid_center_report_-_estimating_the_economic_impact_of_presidential_administrative_action_and_comprehensive_immigration_reform.pdf).

<sup>10</sup> Patrick Oakford, *Administrative Action on Immigration Reform, The Fiscal Benefits of Temporary Work Permits*, at 9 (CAP, 2014), <http://cdn.americanprogress.org/wp-content/uploads/2014/09/OakfordAdminRelief.pdf>.

alone, granting deferred action and a temporary work permit to those individuals who would be eligible would result in a \$338 million increase in tax revenues over five years.<sup>11</sup>

As a result of these particular benefits, deferred action will have the effect of growing the economy generally. Researchers predict that over the next 10 years the executive actions will have the effect of increasing GDP by at least 0.4 percent (\$90 billion) or as much as 0.9 percent (\$210 billion).<sup>12</sup> The CEA explains that this growth will be the result of (1) “An expansion in the size of the American labor force by nearly 150,000 workers over the next ten years, largely as a result of higher labor force participation”; and (2) “An increase in the productivity of American workers, both because of increased labor market flexibility and reduced uncertainty for workers currently in the United States and because of increased innovation from high-skilled workers.”<sup>13</sup> Moreover, as a result of high GDP and higher tax revenue, the CEA estimates that the executive actions on immigration will decrease federal deficits by between \$25 and \$60 billion over the next 10 years.<sup>14</sup>

## **II. The Requested Injunction Would Harm Individuals**

### **A. The Economic Effects On Individuals Granted Deferred Action**

The Deferred Action Initiative will create access to better jobs and improve the working conditions of many undocumented individuals now employed in the United States. Because undocumented immigrants seek out jobs that minimize their risk of being identified and deported, they often do not work in jobs that best fit their skills and abilities, which would

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<sup>11</sup> Center for American Progress, *Executive Action on Immigration Will Benefit State Economies*, available at <http://www.scribd.com/doc/248189539/Topline-Fiscal-Impact-of-Executive-Action-Numbers-for-28-States>, at 3.

<sup>12</sup> CEA, *The Economic Effects of Administrative Action on Immigration*, *supra* n.6, at 2.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

maximize their earning potential.<sup>15</sup> Making workers eligible for deferred action and work permits will allow them greater occupational mobility, enabling them to seek out a wider range of potential jobs. Moreover, as CAP has explained, “[t]he interaction between our broken immigration system and employment and labor laws have made undocumented workers more susceptible to exploitation in the workplace, leading them to earn lower wages than they otherwise could.”<sup>16</sup> Eliminating the fear of retaliatory reporting and potential deportation will allow these workers to better protect their own workplace rights, leading to higher real wages and fewer violations of employment and labor laws and regulations.<sup>17</sup>

The increased wage benefit to those eligible for deferred action will be much larger. CAP estimates that “[t]emporary work permits would increase the earnings of undocumented immigrants by about 8.5 percent as they are able to work legally and find jobs that match their skills.”<sup>18</sup> Similarly, the Fiscal Policy Institute estimates that wages for those eligible for legal work status will increase by 5 to 10 percent.<sup>19</sup> Overall, one estimate suggests that the individuals

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<sup>15</sup> Patrick Oakford, *supra* n.10, at 6.

<sup>16</sup> *Id.* at 5. Additionally, deferred action will not have a negative impact on employment for native-born workers. The CEA explains: “Theory suggests that these policy changes would not have an effect on the long-run employment (or unemployment) rate . . . as the additional demand associated with the expanded economy would offset the additional supply of workers. . . . Consistent with the theory, much of the academic literature suggests that changes in immigration policy have no effect on the likelihood of employment for native workers.” CEA, *The Economic Effects of Administrative Action on Immigration*, *supra* n.6, at 9.

<sup>17</sup> Indeed, enabling undocumented workers to better protect their workplace rights will have a positive effect on all U.S. workers. Not only will more workers have the opportunity to bring employers’ violations to light, but diminishing the exploitation of these workers will prevent a race-to-the-bottom in workplace conditions. *See* Patrick Oakford, *supra* n.10, at 6.

<sup>18</sup> *Id.* at 3.

<sup>19</sup> Fiscal Policy Institute, *President’s Immigration Action Expected to Benefit Economy*, <http://fiscalpolicy.org/presidents-immigration-action-expected-to-benefit-economy>.

eligible to receive deferred action through this initiative “will experience a labor income increase of \$7.1 billion dollars.”<sup>20</sup>

The benefits of the Deferred Action Initiative for upward mobility are apparent from the impact of the initial DACA program, announced in June 2012. According to the findings of a national survey of 1,402 young adults across the country who were approved for DACA through June 2013:

Since receiving DACA, young adult immigrants have become more integrated into the nation’s economic institutions. Approximately 61% of DACA recipients surveyed have obtained a new job since receiving DACA. Meanwhile, over half have opened their first bank account, and 38% have obtained their first credit card.<sup>21</sup>

In short, DACA created greater levels of contribution to the workforce by educated individuals who previously had limited employment opportunities.

#### **B. Examples Of Benefits From Deferred Action**

The stories of the individuals described below highlight the benefits of permitting the Executive Branch to roll out the Deferred Action Initiative unimpeded by judicial intervention. As Defendants have explained, the Deferred Action Initiative allows DHS to focus its limited resources on such priorities as national security and public safety. Dkt. 38 at 51-53. The initiative does so by identifying individuals who are low priority – because they were brought to the United States as children or have long-standing ties to the country and to U.S. citizen and lawful permanent resident children, and have no history of serious crimes – and allowing them to submit an application (including a fee) to remain in the country for a limited period of time,

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<sup>20</sup> Dr. Raul Hinojosa-Ojeda with Maksim Wynn, *supra* n.9, Appendix A at 32.

<sup>21</sup> Roberto G. Gonzales and Veronica Terriquez, *How DACA is Impacting the Lives of Those who are now DACAmended: Preliminary Findings from the National UnDACAmended Research Project* (American Immigration Council, 2013), <http://www.immigrationpolicy.org/just-facts/how-daca-impacting-lives-those-who-are-now-dacamented>.

thereby freeing up enforcement resources for high priorities. *See* Defendants' Exhibit 7. The following are descriptions of some individuals who stand to benefit from deferred action.

**1. Individuals brought to the United States as children**

Expanded DACA, like its predecessor, is designed to allow individuals who were brought to the United States as children, pursued educational opportunities, and lack a viable means to legalize their status, to apply for a temporary reprieve from deportation and obtain work authorization. The eligible individuals often know only the United States as their home but, despite having been raised and educated here, lack the ability to work legally. The original DACA program limited relief to individuals who were under age 31 as of June 15, 2012. This cut-off date excluded numerous individuals.

**Jose Antonio Vargas.** For example, Jose Antonio Vargas, who is now age 33, arrived in the United States at the age of 12 from Antipolo, Philippines. He currently lives in California. Jose Antonio is a well-known journalist and filmmaker who was part of the *Washington Post* team that won the Pulitzer Prize for coverage of the Virginia Tech shootings in 2011. He is also a filmmaker and founder of the nonprofit media and culture campaign, "Define American," which seeks to elevate the immigration conversation in the United States. Jose Antonio discovered he was undocumented at the age of 16 when he attempted to apply for a driver's license. He is the only undocumented member of his family. He missed the age cutoff for the original DACA program by a few months. Jose Antonio is already an American entrepreneur and business owner who has made tremendous contributions to society through his films and advocacy work. He has created numerous jobs for U.S. citizens despite lacking his own work

authorization, for which the expanded DACA initiative would finally allow Jose Antonio to apply.<sup>22</sup>

**Aly.** Aly has lived in the United States for 25 years. He arrived in 1985 from Dakar, Senegal at the age of 8. He currently lives in Syracuse, New York, where he is an established community organizer. He originally came to the United States as the son of a diplomat who worked at the United Nations. He eventually traded his diplomatic visa for a student visa, graduated from Georgetown Preparatory School, attended the University of Pennsylvania, and completed his studies with a Bachelor of Arts in Political Science from Le Moyne College in Syracuse. He missed the age cutoff for the original DACA program, but would be able to apply under the recent expansion.<sup>23</sup>

**Juan Carlos.** Juan Carlos is 21 years old and lives in North Carolina. He is originally from El Salvador but came to the United States when he was 15 years old. He was detained while crossing into the United States in 2008 and has a final order of removal. Following his high school graduation in June 2012, Juan Carlos was accepted into five colleges. However, he could not afford to attend because North Carolina does not provide in-state tuition for undocumented students. To make ends meet, Juan Carlos started working with his father in construction. After he fell on his third day of work, he did not return to that job because he knew that if he suffered a more serious workplace injury, he would not be able to afford the medical costs.

Juan Carlos is a community organizer who serves on the National Coordinating Committee of United We Dream and is a part of the Dream Organizing Network. He was not eligible for the original DACA program because he came to the United States in 2008, but he

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<sup>22</sup> Information on file with Karen Tumlin, NILC.

<sup>23</sup> Information on file with Karen Tumlin, NILC.

would qualify for the Deferred Action Initiative under the November 20, 2014 memorandum. Receiving deferred action would not only remove the constant fear of deportation that Juan Carlos faces but also would allow him to pursue higher education, to follow his dream of becoming an architect, and to better support his parents through lawful employment.<sup>24</sup>

**Dani.** Dani entered the U.S. lawfully from the Philippines at the age of 13 with her mother, who had a visa to work in a domestic capacity for a World Bank employee. She has lived in the United States since November 2008, attended school in the United States, and received her diploma from a high school in the District of Columbia. Despite having good grades, Dani could not qualify for financial aid due to her immigration status. The original announcement of DACA did not help Dani as she entered after the June 15, 2007 cutoff. She met the other eligibility criteria for DACA at that time. The recent expansion of DACA to those who entered between June 15, 2007, and January 1, 2010, would allow Dani to apply.<sup>25</sup>

## **2. Parents of U.S. citizens and lawful permanent residents**

Certain other individuals with strong ties to the United States will become eligible for deferred action based on the immigration status of their children.

**Nery.** For example, Nery is a 33-year-old citizen of El Salvador who has been in the United States since 2007 and currently resides in Illinois. He is the father of two U.S. citizen sons, one of whom has been diagnosed with Fragile X syndrome, developmental delays, and a heart murmur. Nery's son is completely dependent on therapy, constant care, and access to hospitals and cardiologists in the United States. His son cannot communicate his needs, cannot feed himself, and has limited mobility.

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<sup>24</sup> See Letter from Julieta Garibay, Co-founder and Deputy Advocacy Director of United We Dream, to Karen Tumlin, NILC (Dec. 29, 2014) (on file with NILC).

<sup>25</sup> See Letter from Andres C. Benach, Esq., to Melissa Crow, American Immigration Council (Dec. 29, 2014) (on file with Immigration Council).



In 2008, Nery was in a car accident in which another driver hit his car. Because Nery did not have a driver's license, he was arrested and subsequently transferred to immigration custody. On the day of his immigration court hearing, his wife went into labor. Birth complications made it impossible for Nery to leave his wife's side. He contacted his attorney who incorrectly advised him that he could stay with his wife during her labor. As a result, he received an *in absentia* order of removal.

In 2011, Nery was arrested after being pulled over for speeding when he was driving his sick son to the hospital. The police took Nery, but left his wife and two children on the curb with no way to get to the hospital for timely medical help. With the assistance of the National Immigrant Justice Center in Chicago, Nery was able to benefit from a temporary exercise of prosecutorial discretion. However, Nery still needs to renew his status and could be deported at any time, which would have a disastrous impact on his family. Nery is eligible to apply for deferred action and work authorization, which would enable him to provide for his family with more stability and a reduced fear of separation.<sup>26</sup>

**Denis and Reina.** Denis has lived in the U.S. for eleven years. His wife, Reina, has lived in the U.S. since 2007. Both are from Honduras. Denis left Honduras in 2003 because he feared for his life. His grandmother was murdered in front of their home in retaliation for filing a police complaint, and he was afraid that he would also be targeted.

Denis has lived in the New Orleans area since Hurricane Katrina devastated the Gulf Coast South. A skilled roofer and construction worker, he came to the city to contribute to the rebuilding of New Orleans after the storm. Denis and Reina are the parents of a one-year-old son who is a U.S. citizen. Unfortunately, their young son has been diagnosed with respiratory

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<sup>26</sup> See Letter from Charles Roth, Esq., to Karen Tumlin, NILC (Dec. 29, 2014) (on file with NILC).

complications that require regular physician visits as well as emergency care. Denis' income is the family's main source of financial support, and multiple physicians have advised him that his continued presence in the United States is critical to ensuring that his son receives adequate medical care. Denis is subject to a final removal order, which was issued following proceedings that he did not adequately understand and at which he was forced to represent himself. Reina has had no contact with immigration authorities. Neither Denis nor Reina has a criminal record.

Last year, Denis was arrested during an immigration sweep at an apartment complex where the couple was searching for a new home. Denis was granted a temporary stay of removal, for which he must reapply every few months, leaving him and his family in constant fear that he will be deported. The Deferred Action Initiative would protect Denis and Reina from deportation, allowing their family to remain together and maximizing the chances for a safe, healthy future for their son. Moreover, deferred action would enable them to continue to contribute to the economy and their community. If granted deferred action, Denis plans to expand his construction business, and Reina plans to open a coffee and pastry business. Deferred action would also allow the couple to continue their work as leading members of the New Orleans Workers' Center for Racial Justice and its community project, the Congress of Day Laborers.<sup>27</sup>

**Rebeca.** Rebeca (a pseudonym to protect her identity) entered the United States from Mexico in 2000 and currently resides in Indiana. She has six children, four of whom are U.S. citizens. One of her children has DACA. During her time in the United States, Rebeca suffered years of physical and verbal abuse at the hands of her domestic partner. Her abuser, who was often drunk, would yell at her and beat her in front of her children. On one occasion he punched

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<sup>27</sup> See Letter from Yihong "Julie" Mao, Esq., to Karen Tumlin, NILC (Dec. 29, 2014) (on file with NILC).

her in the stomach while she was pregnant; on another occasion, he threatened her with a knife. The abuser was arrested for felony battery and eventually deported. As the mother of U.S. citizen children, Rebeca could benefit from deferred action, which would enable her to continue to raise her children in the only country they have ever known.<sup>28</sup>

**Rosa Maria.** Rosa Maria is 61 years old and was born in Hermosillo, Mexico. She came to the United States more than 15 years ago on a tourist visa to visit California. She stayed after her visa expired hoping that she could improve her life by earning a better living and helping her children get access to a good education. She originally came to the United States alone without her children, who remained in Mexico in the care of her adult children. Her youngest daughter, Dulce, came to join her in July 2000 and they moved to Arizona.

Living in the United States has allowed Rosa Maria's daughter to get a good education and to succeed professionally. Dulce graduated from Arizona State University in 2009 with a degree in electrical engineering and has been a leader in the Arizona Dream Act Coalition, which helps promote the rights of undocumented youth in Arizona. However, living in the United States has also been challenging for Rosa Maria, who has been separated from her family in Mexico. Because of her lack of immigration status, she has had to miss the funerals of three of her siblings and one of her parents as well as the university graduation of one of her children. Rosa Maria has U.S. citizen siblings, and her daughter Dulce is now a lawful permanent resident, which qualifies Rosa Maria to apply for the Deferred Action Initiative. If granted deferred action, Rosa Maria would be in a better position to support her family.<sup>29</sup>

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<sup>28</sup> See Letter from Charles Roth, Esq., to Karen Tumlin, NILC (Dec. 29, 2014) (on file with NILC).

<sup>29</sup> Information on file with Nora Preciado, NILC.

**Sara and Juan.** Sara and Juan are the parents of four children, two of whom are U.S. citizens. They currently live in Austin, Texas, where they are involved in their church. Sara and Juan are originally from Guanajuato, Mexico, and have lived in the United States for 12 years and 14 years, respectively. Both of them would be eligible to apply for deferred action because of their two U.S. citizen children. If Sara and Juan are approved for deferred action, their children would no longer have to worry about the possibility that their parents might be deported while they are at school or merely going about their daily activities. To Sara and Juan, having deferred action would mean a sense of peace and opportunity for their family. They would also finally feel able to invest in a home without the fear of losing it.<sup>30</sup>

These stories illustrate the strong benefits the Deferred Action Initiative will provide to our nation's families, communities, and economy. These benefits, as well as those Defendants discuss, demonstrate that a preliminary injunction would cause significant harms and would be against the public interest.

### CONCLUSION

For the reasons in Defendants' brief and the reasons above, the preliminary injunction should be denied.

Dated: December 29, 2014

Respectfully submitted,

/s/ Jonathan Weissglass

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<sup>30</sup> See Letter from Julieta Garibay, Co-founder and Deputy Advocacy Director of United We Dream, to Karen Tumlin, NILC (Dec. 29, 2014) (on file with NILC).

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**CERTIFICATE OF SERVICE**

I hereby certify that service of the foregoing motion and the proposed order will be delivered electronically on December 29, 2014, to counsel for Plaintiffs and Defendants through the District's Electronic Case Filing system.

/s/ Jonathan Weissglass

**Post-Hearing Questions for the Record  
Submitted to Stephen Goss  
From Senator Ron Johnson**

**“Deferred Action on Immigration: Implications and Unanswered Questions”**

**Hearing of February 4, 2015: Response to Question March 6, 2015**

1. What would the effect be on the Trust Funds if we allowed work authorization for DACA and DAPA recipients, but did not issue a Social Security Number?

Answer: First, let me again thank you for the opportunity to testify before the committee on this important topic. It has been a pleasure working with members of your staff. Regarding this particular question, Gabrielle D’Adamo has been most responsive in clarifying the specific nature of this question.

As indicated in my letter to you dated February 2, 2015, we developed our estimates of the implications of the President’s executive actions on the U.S. population, the economy, and the Social Security Trust Funds based on our understanding of the way the actions will apply. First, we assumed that the actions would persist indefinitely for the groups affected. In addition, we assumed that individuals approved under the 2014 actions for DACA and DAPA status would be able to reapply periodically to extend the status without limit. This extension of work status would allow the qualifying individuals not only legal work authorization (and thus the issuance of a Social Security number), but also legal authorization to reside in the U.S. and thus to receive any Social Security benefits that may be due based on their earnings from work under the DACA or DAPA status.

As clarified by Gabrielle, I understand your question to be: How would our estimates differ if the actions were modified so that individuals authorized to work under the 2014 DACA and DAPA actions would be obligated to pay (along with their employer) all Social Security payroll taxes due on their earnings, but these individuals would not be permitted to receive a benefit from the Social Security program while still under either of these statuses? These earnings from work while in 2014-action DACA or DAPA status would, however, be credited toward qualifying for and determining the amount of Social Security benefits at any time after the individual had gained legal permanent resident status.

In table A1 enclosed with the February 2 letter, we estimated the 2014 executive actions would result in \$34.7 billion additional Social Security payroll tax revenue but only \$0.1 billion additional Social Security program cost through 2024. Under the modification suggested by your question, not being eligible to receive Social Security benefits while in 2014-action DACA or DAPA status would result in a small reduction in the number of individuals who would be motivated to apply for these statuses and to pay the application fees. On the other hand, the Social Security Trust Funds would incur less benefit obligation. The changes for revenue and cost through 2024 would be small, so we estimate that the net effect on the trust funds would be essentially unchanged from that indicated in the letter.

Table 1 enclosed with the letter indicates that we estimate the cost for the Social Security (OASDI) program over the long term (the next 75 years) would be increased by 0.04 percent of payroll, while program non-interest income would increase by 0.05 percent of payroll over the period. The net effect on the OASDI long-range actuarial balance is therefore estimated as 0.01 percent of payroll increase in the actuarial balance (or reduction in the actuarial deficit). Under the modification suggested by this question, the increase in OASDI cost over the period would be reduced to about 0.02 percent of payroll, and the increase in program non-interest income would be reduced to about 0.04 percent of payroll. Thus, under this modification, we estimate that the executive actions would increase the long-range OASDI actuarial balance by about 0.02 percent of taxable payroll.

I hope this estimate for the possible modified version of the executive actions will be helpful. Please let me know if we can be of any further assistance.



**Responses of Hon. Eileen O'Connor  
To Post-Hearing Questions for the Record  
From Senator Ron Johnson**

**“Deferred Action on Immigration: Implications and Unanswered Questions”  
February 4, 2015**

1. The President often talks about how these actions will bring people out of the shadows and start paying taxes. In your estimate, how many of the DACA or DAPA eligible individuals were already paying taxes, and for those that were, weren't a lot of them receiving more from the Federal Treasury than they contribute to it?

**Response**

Supporters of the Administration's executive actions on immigration claim that it will be good for the Federal Treasury because it will bring people "out of the shadows" and enable them to start paying taxes. Perhaps this is true for some, but certainly not for all, or even most. It is not possible to say, because the federal agencies involved in these matters - DHS, SSA, and IRS - do not capture data that would permit us to derive this information. Congress should demand that they do so. Information presently available from those agencies falls short of informing Congress and the people who pay the bills - U.S. taxpayers - of the true impact to the Federal Treasury of the cost of illegal immigration before or after the Administration's "executive actions."

Some observations from which we might derive the answers to your questions include information:

From the Internal Revenue Service

- People working in the U.S. legally have social security numbers. Those working in the U.S. illegally are ineligible to receive social security numbers, so file their returns, if at all, using ITINs - individual tax identification numbers the IRS issues them for the purpose. Or they file returns using social security numbers they invented, borrowed, or stole.
- IRS Commissioner Koskinen reported to Congress in July 2014 that, since it began doing so in 1996, IRS had issued 21 million ITINs. He said that a quarter<sup>2</sup> of them are being used on tax returns.
- The Treasury Inspector General for Tax Administration reported that for 2011 alone, IRS processed 2.9 million ITIN returns, and paid more than \$6.8 billion in "refunds" to the filers. For 2010, the IRS paid \$4.2 billion in "refunds"<sup>1</sup> to persons filing income tax returns using ITINs and reporting (truthfully or otherwise) a certain amount of taxable income.

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<sup>1</sup> "Refunds" is enclosed in quotation marks to remind the reader that these are not refunds in the ordinary sense. Where "refundable credits" are concerned, refunds are not the return of amounts actually paid in. They are outlays from the Federal Treasury.

From the Social Security Administration

- Although no U.S. person is more than 112 years old, the Social Security Administration has 6.5 million social security numbers belonging to people who are.
- The SSA IG report revealing the above fact also details a situation with which IRS ought to be familiar: a social security number (1) that had been issued to a person who was born in 1896, and who filed for benefits in 1958 and stopped reporting earnings in 1962 and (2) that was dormant from 1963 to 2006, was (3) used to report earnings of \$11,450 to \$27,694 beginning in 2007 and continuing to the present. While it is possible that these returns are of actual earnings, and represent the possibility that the return filer paid taxes, it is just as likely that these were fraudulent returns filed for the sole purpose of causing the IRS to issue a fraudulent "refund" check. These earnings amounts are in the range contrived by criminals who file fake tax returns to maximize the "refundable credits" that will cause the IRS to send them a check.
- When the Social Security Administration reports on the amount of social security taxes collected, it does not take into account the amounts paid out by the IRS that are in essence a refund of those taxes.
- In a 2013 report, SSA's Chief Actuary estimated that, during 2010, the Social Security Administration paid roughly \$1 billion in "benefits" to unauthorized immigrants.
- IRS "locks" the accounts of persons who have died, so their social security numbers cannot be used to commit fraud on the Federal Treasury. But as of mid-2014, IRS had locked only 25 million of the 450 million social security numbers SSA has issued since the program began 80 years ago.

From the Department of Homeland Security

- The U.S. Customs and Immigration Services (USCIS) reported in March 2015 that it had processed nearly seven million immigration-related applications during fiscal year 2014. USCIS officials testified before Congress that the agency does not have the resources to appropriately determine the eligibility of the applicants. So, rather than denying the application, the agency grants it without confirming the appropriateness of the action, leaving American citizens and local law enforcement agencies to deal with the consequences.
- Persons USCIS approves as covered by the "executive actions" will be eligible to apply for and be issued social security numbers. With these numbers, they will, according to current IRS position, be able to file tax returns for the current year and the three preceding years claiming earned income tax credits – EITC – to which they were not entitled during those years.
- Unless the SSA changes its procedures, the social security numbers it issues - to persons the "executive actions" render temporarily not illegally present in the U.S. - will endure in perpetuity.

### **Conclusions**

As the foregoing demonstrates, we cannot know how many tax returns reporting actual<sup>2</sup> income have been filed by persons unlawfully present in the U.S. While the 2.9 million ITIN returns filed for 2011 might be considered an approximation of the number of tax returns filed by persons unlawfully present in the U.S., we know that tens of thousands of those returns were fraudulent, and that persons unlawfully present in the U.S. also file returns using social security numbers they created, borrowed or stole.

As to whether the returns of persons unlawfully present in the U.S. result in net income to, or outflow from, the Federal Treasury, available data appears to suggest that these returns result in a net outflow.

Some economic studies have concluded that, while the first generation of immigrants generally present a net cost to the Federal Treasury, later generations contribute to it. These studies, however, were based on earlier waves of immigrants, ones who came to the U.S. for the opportunity to live peacefully and create their own financial independence. Given the incentives currently offered to be financially dependent on government largesse, one cannot predict with confidence that the trend formed by earlier waves of immigration will hold true for current ones.

### **Recommendations**

Without regard to whether the Administration's "executive actions" are ultimately implemented:

- Congress should require that agencies involved in the acceptance of persons into the United States, and in the collecting of taxes from, and dispensation of benefits to them, capture and report to Congress - and Congress should report to the taxpayers - the true costs, including the administrative costs.
- Congress should abandon the "lock-box" charade for social security taxes, and, in determining the true costs, net the "refundable credits" IRS has paid out - which represent a refund of social security taxes paid in - against the social security taxes the Social Security Administration reports as collected.
- Congress should clarify that the EITC is available only to with respect to income earned in a year during which the person claiming it was eligible for it. In other words, Congress should demand IRS stop issuing EITC refund checks for years preceding the year in which the claimant was eligible for it.
- Congress should make a social security number a requirement for the "refundable" child tax credit. It should demand that the child in connection with whom the credit is claimed is resident in the United States, and that his or her presence in the United States, and that of the person claiming the credit, is not in violation of any U.S. laws.
- Congress should require the Social Security Administration to immediately devise and implement procedures to invalidate social security numbers at the expiration of the recipient's eligibility. And SSA should be authorized and required to share this expiration information with other federal

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<sup>2</sup> Actual income, as distinguished from income falsely declared for the sole purpose of defrauding the Federal Treasury by claiming refundable credits.

agencies whose competent performance of their responsibilities depends on having this information. .

2. What can we do to reduce the amount of fraud and improper payments associated with the Earned Income Tax Credit and Additional Child Tax Credit, particularly now that we're going to potentially be adding another 5 million eligible individuals?

**Response**

I will not repeat here the data included in my written and oral testimony. Suffice it to note that, notwithstanding continuous efforts to avoid doing so, year after year the IRS issues tens of billions of dollars in fraudulent refunds, often enabled by refundable credits.

**Recommendations**

The Earned Income Tax Credit and Additional Child Tax Credit are not the only refundable credits in the Internal Revenue Code. Congress should repeal them all. They are not credits in the customary meaning of the word, and create administrative obstacles that have proven to be insurmountable.

If Congress wants to provide assistance to needy individuals - rather than permitting communities to take care of them and provide the help they actually need, instead of just a monetary handout - it should do so through the development of a program and the appropriation of funds to it, not through the back door of a contrived and phony "refund" of taxes the applicant did not pay.

Other refundable credits have as their aim Congress's evasion of the Constitutional requirement that it affirmatively appropriate funds it wishes to expend from the Federal Treasury. Congress should honor its Constitutional obligations: it should cease this practice and repeal all provisions that employ it.

Answers to Post-Hearing Questions for the Record  
Submitted by Luke Bellocchi  
To Senator Ron Johnson

“Deferred Action on Immigration: Implications and Unanswered Questions”  
February 4, 2015

- 1) **How will the President’s DAPA and DACA policies effect legal immigration? How will the wait times change for those legally applying for green cards and visas after USCIS sees a flood of DACA and DAPA applications? How can we ensure that USCIS prioritizes legal immigrants over illegal immigrants?**

Is Policy Driven by Legal Standards?

There is no doubt that immigrants have contributed to the greatness of our nation since inception, and that those here should have a chance to do the same under the right circumstances and procedures and in a manner fair to those who applied legally first. However, the U.S. immigration system is no longer driven by law Congress developed over two centuries,<sup>1</sup> good or bad. Rather, immigration policy has arguably been largely driven in the last two decades through mass circumvention of legal entry and documentation (and the response to that circumvention), with the *expectation* that there will eventually be some way to gain legal status,<sup>2</sup> if not through an eventual fail-safe legalization program.

Discussions with Department of Homeland Security (DHS) and consular officials reveal that the normal “line” for green cards has moved more rapidly than expected in recent years because larger numbers of applicants have abandoned their applications. These officers quietly suspect people are no longer waiting years (sometimes decades) overseas anymore for their green cards. Instead, they are finding some way to get into the U.S. with the belief that they can engineer a way to stay if caught. In their minds, why should they wait around when they see others entering the U.S. and remaining here, while they are left behind.

Since 1986, there have been thirteen immigration legalization programs of one sort or another, providing for 3.75 million people to adjust their status to Legal Permanent Resident (“green card”) status (outside the normal procedures) and eventually apply for citizenship.<sup>3</sup> Some of these programs were population-specific asylum-type programs that perhaps can be seen as supplementing our existing refugee program;<sup>4</sup> nevertheless, the perception remains the same.

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<sup>1</sup> The most recent base framework being the Immigration and Nationality Act (INA) of 1965.

<sup>2</sup> This could be through marriage to an American citizen, sponsorship by a close American citizen relative, or sponsorship through an employer. Once someone loses authorization to be in the U.S. (or never had it), it can become increasingly difficult to change into legal status, short of a legalization program.

<sup>3</sup> See Migration Policy Institute, “More than IRCA: US Legalization Programs and the Current Policy Debate,” Dec. 2010, citing U.S. Department of Homeland Security (DHS) Yearbook of Immigration Statistics.

<sup>4</sup> The U.S. has provided for the entry and settlement of about 70,000 refugees every year in the past decade. Refugees (a separate group from those who claim asylum in the U.S. or at the border) are given green cards and resettled through Department of Health & Human Services. <http://www.state.gov/j/prm/releases/statistics/index.htm> and <http://www.uscis.gov/humanitarian/refugees-asylum/refugees/united-states-refugee-admissions-program-usrap-consultation-worldwide-processing-priorities>.

Thus, recent immigration “policy” has not re-enforced existing laws that were created after undergoing the Congressional vetting process. As for DHS immigration officers, this has been an increasingly demoralizing and deteriorating state of affairs.

DACA and DAPA are programs that fulfill the expectation of legalization and eventual Legal Permanent Residence and citizenship. It is the largest program following a series of legalization programs that date back into the 1980’s. They circumvent the normal process of obtaining entry into the United States and remaining on a temporary or permanent basis.

#### “Normal” Immigration Process

For non-Americans to enter the U.S., they must normally obtain a “visa” from a U.S. consular office abroad.<sup>5</sup> The visa specifies the category (tourist, specialty worker, treaty investor, entrepreneur, intercompany transferee, seasonal worker, professional athlete, etc.) and upon reaching a port of entry, a Customs official grants a term of stay (e.g., up to 90 days for tourism).<sup>6</sup> If they overstay their term or enter without inspection, they are considered undocumented or illegally in the U.S., and they can be subject to a three or ten year bar of re-entry and they cannot normally change their immigration status.

#### Immigration Lines and Quotas

Those who maintain their legal immigration status can normally apply for a Legal Permanent Resident (green card) status and remain permanently, so long as they wait in line<sup>7</sup> and fit legal conditions. Those conditions include close family relations, investment-entrepreneurship,<sup>8</sup> employment,<sup>9</sup> or asylum. Those currently outside the U.S. can apply for a green card, but must wait in line outside the U.S. and go through an application and interview process at a U.S. consular office. The length of line depends on *quotas* set for *each nationality*,<sup>10</sup> the number of applicants of that nationality, and quotas set for each basis of green card (family, employment, etc.).

It follows then, that those applicants who are waiting in line for the privilege of living in the U.S. on a permanent or long-term basis, would not have their applications acted on before DACA or DAPA applications (injunction aside), which have no quotas.<sup>11</sup> Another way to see it is there are constant lines and quotas for green cards (and some temporary visas) through which DAPA and

<sup>5</sup> Canadians are exceptions, and some Mexicans and Canadian Landed Immigrants (Canadian permanent residents) can get a Border Crossing Card. Citizens of Visa Waiver countries may enter for tourism or business (not work) for up to 90 days on condition that they waive any review of deportation should they overstay.

<sup>6</sup> Some applicants obtain “immigrant visas” abroad after waiting in line, and on entry, become a Legal Permanent Resident (“green card” holder) who can remain permanently in the U.S. and eventually apply for citizenship.

<sup>7</sup> Waiting in line for a green card should be clarified: there are several green card lines, depending on the basis or category for the green card and the country of origin. Green cards based on an immediate relative U.S. citizen have essentially no line, but a high-tech worker from India may have to wait many years.

<sup>8</sup> The EB-5 category is for foreign investors who bring between \$500,000 to \$1 million, depending on the geographic area, to the U.S. to start a business or pool with other investors in a development project.

<sup>9</sup> Employment-based green cards normally require employer sponsorship and a vetting process to ensure that no American worker is willing and able to take the position offered to the foreign worker.

<sup>10</sup> The quota system for nationalities may seem odd or outdated, but actually broadened even more restrictive quotas based on the Asian Exclusion Act, Chinese Exclusion Act, and other similar legislation.

<sup>11</sup> USCIS has in the past (and based on recent statistics, does currently) hold in abeyance those applications that are not ripe for action (do not have a quota number).

DACA applicants do not have to wait in. DACA/DAPA applicants would not get the same long-term benefits, but the immediate immigration result is the same or better. As the Court that issued the recent injunction staying DAPA states in its opinion, "...the DAPA Memorandum confers the right to be legally present in the United States, and enables its beneficiaries to receive other benefits...."<sup>12</sup>

#### Diverting Resources for DACA/DAPA

Further, DAPA and extended-DACA applications will undoubtedly divert attention and resources away from those who applied under normal conditions for other immigration benefits. USCIS currently processes 6-7 million applications a year, and even though USCIS appears to have hired a number of contractors to assist in DACA support processing,<sup>13</sup> USCIS diverted officers and resources away from regular immigration processing to handle DACA applications. As of December 31, a backlog of 784,323 I-130 (family-based green cards) applications has formed,<sup>14</sup> and 478,121 I-90 applications remain pending, as a result of the increase in DACA application processing. In many cases, application processing has well exceeded USCIS targets of six months. With the current court injunction stopping DAPA processing, however, USCIS has a reprieve to work on lowering the backlog.

As stated in testimony, the USCIS planned to hire 1000 new workers (700 of which will be new federal agents, and 300 contractors). This was the plan before a recent court injunction stayed any further action on DAPA.<sup>15</sup> To reiterate, DACA involved application numbers that are 1/10<sup>th</sup> the estimated size of the DAPA applicant pool at five million (versus 690,000 for DACA). It is hard to see how an additional 1000 workers, even if fully trained and experienced, can make up for an additional five million applications USCIS is expected to receive without affecting regular processing times. Without support from experienced officers, each new officer would have to process and adjudicate 7412 applications within the six month target (including weekends that would mean 39 applications per day for 700 adjudicators, as the additional 300 contractors could only provide support). Even if applications did not all come in the first few weeks, there will be an overwhelming number of applications. Of course, if application and evidentiary requirements are simple, and review of applications is perfunctory, then applications can be processed with minimal training and effort. If USCIS does divert resources away from regular processing to handle DAPA applications, it is unclear how extended regular processing will become, but recent history with backlogs at USCIS suggests that may extend regular processing well beyond the maximum six month target for most applications.

<sup>12</sup> U.S. District Court (SDTX), *State of Texas, et al, v. U.S., et al*, Civil No. B-14-254, Feb. 16, 2015, at p. 110.

<sup>13</sup> It has been reported that 900 new employees (mainly contractors) were hired in response to the increased workload from DACA. J. Gerstein, "Bureaucratic Nightmare on Immigration?" Politico, Nov 21, 2014.

<http://www.politico.com/story/2014/11/immigration-action-government-implement-113108.html>.

<sup>14</sup> See USCIS Data Sets for 2012 - 2014, <http://www.uscis.gov/tools/reports-studies/data-set-form-i-130-petition-alien-relative>. In FY2012, third quarter, USCIS had a total of 82,496 pending I-130s; in June 2013, there were 1.9M pending I-130s; that number went down in September 2013 to 885,935 and in March 2014 to 840,017. I-90 data: [http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/all\\_forms\\_performancedata\\_fy2014\\_qtr4.pdf](http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/all_forms_performancedata_fy2014_qtr4.pdf).

<sup>15</sup> U.S. District Court (SDTX), *State of Texas, et al, v. U.S., et al*, Civil No. B-14-254, Feb. 16, 2015.

#### How to Prioritize Immigration Applications

To address your question as to how to ensure USCIS prioritizes legal immigrants over illegal immigrants, I can only suggest that Congress urge USCIS actually follow a stated “first-in, first-out” policy<sup>16</sup> and pass a mandate that prioritizes the processing of applicants who have adhered to immigration laws before applicants who have not.

With regards to the DACA/DAPA program, it would be fair to require the processing of green card applications that were in line before the President’s announcement before DACA/DAPA applications. This brings into question why there are nationality-based quotas for green cards, but not for programs such as DACA/DAPA. Immigration policy should be based on the needs of the country, and more particularly at this time of economic hardship, based on gaining specific economic benefits of immigration. Much has been debated over the economic benefits of immigrants in a generalized sense, even though immigration law specifies types of foreign worker intake to meet economic demands (i.e., seasonal farm workers, etc.). It may make sense for Congress to alleviate quotas based on nationality, and instead focus on numbers of non-Americans needed in particular industries, short- and long-term. For example, numbers of entrepreneurs or investors in particular business areas.

Another area of prioritization involves waivers. Normally, visa and immigration benefits applications must be denied if the applicant falls under host of “inadmissibilities” as stated in law,<sup>17</sup> to include:

- Entering the country without inspection
- Remaining in the U.S. beyond an authorized period of time
- Conviction of a crime of moral turpitude or having multiple convictions
- Terrorism or other security concerns
- Health-related concerns
- Public-charge
- Fraud or misrepresentation
- Child abduction
- Unauthorized work

For temporary visas or immigration status, it may be possible for applicants to get a waiver from the government. It is a policy question how to prioritize applications that require a waiver among those that do not. In a constant stream of incoming applications at USCIS, it may be difficult, but not impossible, to require priority processing of applications that involve no prior immigration violations.

The Committee may also invoke the Government Accountability Office (GAO) to audit the use of application fees in connection with the processing of DAPA and other applications. In recent

<sup>16</sup> Although USCIS has stated in the past that it adheres to a first-in, first-out policy, it clearly prioritizes certain applications over others, both within visa categories and between categories.

<sup>17</sup> See Immigration & Nationality Act (INA), section 212(a). Above are listed some of the main inadmissibilities; there are more inadmissibility grounds. Also note that grounds for deportation are similar but not exactly the same (see INA, section 237).



testimony before another Senate committee, USCIS discussed the process for determining fee structures for each application type, but the guidelines for factors such as how much terrorism and related anti-fraud effort is devoted to each application, remains unclear. It should be well within the Committee's jurisdiction regarding homeland security screening efforts.

2) **You testified that in the past USCIS has hurried through background checks: conducting minimal checks or none at all.**

a) **What is the likelihood of that happening again and what are the consequences of such actions?**

DACA processing has illustrated the likelihood that DAPA applicants will undergo “lean and lite” background checks. DACA applicants were required to undergo biometric checks as part of processing, but were not required to verify their actual identity. Further, under recent USCIS testimony,<sup>18</sup> it is now clear that DACA applicants were not required to undergo full name checks against criminal and terrorist watchlists. Although the regulations or guidance for DAPA has not been released, DHS officials have stated that the application process will be substantially the same as DACA. Thus, it is likely that DAPA applicants will undergo only the basic biometric check.

USCIS also testified at a recent Congressional hearing<sup>19</sup> that it uses different levels of criminal and terrorist watchlist screening depending on the type of immigration classification applied for. This is in response to questioning comparing the level of background checks DAPA and DACA applicants go through versus those who apply through normal immigration procedures.

To clarify what USCIS imparted, it believes that the lower the level of immigration benefit, the lower the level of security background checks it should apply (naturalization applicants undergo the highest scrutiny). It is unclear how or why this policy was instituted, as certainly after 9/11, it is clear that a terrorist or criminal with the lowest level of immigration status (e.g., as a temporary visitor), may perpetrate destructive crimes in the U.S.<sup>20</sup>

It may be time for USCIS to review whether this is appropriate policy given the attention given to homeland security. The consequences of weakened background checks could be disastrous. As 9/11 and a host of other incidents proved, weakened background checks could lead to mass scale disaster.

There are plenty of examples of persons who have been given immigration benefits and turned out to be terrorists or criminals. Since 9/11 government agencies have turned their attention to anti-terrorism efforts, but applying those efforts to immigration applications has often been an afterthought. That is to say, there has been a vast expansion of terrorist watchlists, but sharing of information remains a problem and gaps remain on how that data is applied to immigration processing. Another example of terrorist screening gaps was reported in the March 2015 Inspector General report concerning the clearance of a felon and terrorist group member

<sup>18</sup> Senate Judiciary Committee Hearing, “Oversight of USCIS: Ensuring Agency Priorities Comply with the Law,” March 3, 2015.

<sup>19</sup> Id, testimony of Dan Renaud, in response to questioning by Senator Sessions: “H-1B (applicants) go through different process as would an applicant for permanent residence or applicant for citizenship. We utilize a layered approach to security checks based on the status, right, or privilege one is applying for.”

<sup>20</sup> The 9/11 attackers had entered the U.S. in temporary immigration status as tourists or students, and some had their immigration status extended through application at USCIS (then, INS).

through the Transportation Security Administration's TSA Pre-check program and onto a plane.<sup>21</sup>

Terrorist watchlist screening normally occurs at the time of visa issuance abroad<sup>22</sup> and upon application for admission at the ports-of-entry. As I testified, many or most DAPA and DACA applicants entered the country without inspection and have never been screened. Those who overstayed their visas were checked against some terrorist or criminal watchlist at some point.

Below, I have attached a list of homegrown terrorism perpetrated in the U.S. since 9/11, as produced by Congressional Research Service.<sup>23</sup> Many of these perpetrators went through the immigration benefits system at some period. We have been lucky in disrupting most plots, but as the Boston Marathon bombing illustrates, we are not always so.

I will forego reviewing the information laid out in my testimony regarding USCIS' past experience with Citizenship USA, but it is clear that expedited review of immigration applications has led to poor or non-existent screening in the past and numerous felons and suspected terrorists have been authorized to enter or stay within the country. I will also forego repeating my testimony regarding USCIS management instructions to conduct lean and lite background checks, to accept any form of identification, and otherwise accept supporting documents without review. Informal responses to this report indicate that DACA applicants were biometrically checked with the FBI, but that the USCIS anti-fraud office, FDNS, was not invited to investigate or examine specific cases or patterns of fraud.

This greatly heightens the probability that anyone trying to escape detection could manufacture a new identity through this process. True enough, once biometrics are taken, whatever documentation is provided will be matched up with the biometrics taken, and that will assist in securing the homeland going forward. However, as discussed at the hearing, it does not check whether the applicant has ever committed a crime abroad or otherwise wants to change identity.

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<sup>21</sup> DHS Inspector General, "Allegation of Granting Expedited Screening Through TSA PreCheck Improperly" OIG-15-45, March 2015.

<sup>22</sup> Upon applying for a visa abroad, applicants (unless very young or old) are name checked against a CCD database for inadmissibilities, including for terrorism and past criminal activity. They are also interviewed in person.

<sup>23</sup> Bjelopera, et al, Congressional Research Service, "American Jihadist Terrorism: Combating a Complex Threat," December 7, 2010. It does not include the more recent case of the Boston Marathon bombing.

|                                |                                | ● no      | ● unclear         | ● yes                        |                       |                                                |  |  |  |
|--------------------------------|--------------------------------|-----------|-------------------|------------------------------|-----------------------|------------------------------------------------|--|--|--|
| Plots and Attacks <sup>a</sup> |                                | Lone Wolf | Muslim Convert(s) | Suicidal or Sought Martyrdom | Radicalized in Prison | Intended or Actual Plotting or Training Abroad |  |  |  |
| May 2009–November 2010         | Mohamed Mohamud                | ○         | ○                 | ○                            | ○                     | ●                                              |  |  |  |
|                                | Farooque Ahmed                 | ○         | ○                 | ○                            | ○                     | ●                                              |  |  |  |
|                                | Abdel Shehadeh                 | ○         | ○                 | ○                            | ○                     | ●                                              |  |  |  |
|                                | Omar Hammami                   | ○         | ●                 | ○                            | ○                     | ●                                              |  |  |  |
|                                | Jehad Mostafa                  | ○         | ○                 | ○                            | ○                     | ●                                              |  |  |  |
|                                | Shaker Masri                   | ○         | ○                 | ●                            | ○                     | ●                                              |  |  |  |
|                                | Zachary Chesser                | ○         | ●                 | ○                            | ○                     | ●                                              |  |  |  |
|                                | The Rockwoods                  | ○         | ●                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | Alessa and Almonte             | ○         | ●                 | ○                            | ○                     | ●                                              |  |  |  |
|                                | Faisal Shahzad                 | ○         | ○                 | ○                            | ○                     | ●                                              |  |  |  |
|                                | Colleen LaRose                 | ○         | ●                 | ●                            | ○                     | ○                                              |  |  |  |
|                                | Northern Virginia Five         | ○         | ○                 | ○                            | ○                     | ●                                              |  |  |  |
|                                | al-Shabaab Recruiting          | ○         | ○                 | ○                            | ○                     | ●                                              |  |  |  |
|                                | <b>Ft. Hood (Nidal Hasan)</b>  | ●         | ○                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | David Headley                  | ○         | ○                 | ○                            | ○                     | ●                                              |  |  |  |
|                                | Tarek Mehanna                  | ○         | ○                 | ○                            | ○                     | ●                                              |  |  |  |
|                                | Hosam Smadi                    | ○         | ○                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | Michael Finton                 | ○         | ●                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | Najibullah Zazi                | ○         | ○                 | ○                            | ○                     | ●                                              |  |  |  |
|                                | Daniel Boyd, et al             | ○         | ●                 | ○                            | ○                     | ●                                              |  |  |  |
|                                | <b>Abdulhakim Muhammad</b>     | ●         | ●                 | ○                            | ○                     | ○                                              |  |  |  |
| September 11, 2001–April 2009  | Newburgh Four                  | ○         | ●                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | Bryant Neal Vinas              | ○         | ●                 | ○                            | ○                     | ●                                              |  |  |  |
|                                | JFK Airport Pipeline Plot      | ○         | ○                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | Fort Dix Six                   | ○         | ○                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | Daniel Maldonado               | ○         | ●                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | Derrick Shareef                | ○         | ●                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | Houston Taliban Plot           | ○         | ●                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | Liberty City Seven             | ○         | ●                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | <b>Mohammed Taheri-Azar</b>    | ●         | ○                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | Sadequee and Ahmed             | ○         | ○                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | Toledo, Ohio Plotters          | ○         | ○                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | JIS Plotting in So. California | ○         | ●                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | Lodi Case (the Hayats)         | ○         | ○                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | Albany Plot                    | ○         | ○                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | New York City Subway Plot      | ○         | ●                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | Iyman Faris                    | ○         | ○                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | Ahmed Omar Abu Ali             | ○         | ○                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | Virginia Jihad Network         | ○         | ●                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | <b>Hasan Akbar</b>             | ●         | ○                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | Lackawanna Six                 | ○         | ○                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | Jose Padilla                   | ○         | ●                 | ○                            | ○                     | ○                                              |  |  |  |
|                                | Portland Seven                 | ○         | ●                 | ○                            | ○                     | ○                                              |  |  |  |

| ● no    ● unclear    ● yes     |                                |         |            |                                         |                 |                                  |                               |   |
|--------------------------------|--------------------------------|---------|------------|-----------------------------------------|-----------------|----------------------------------|-------------------------------|---|
| Plots and Attacks <sup>a</sup> | Target                         |         | Endgame    |                                         |                 | Investigation Tools <sup>b</sup> |                               |   |
|                                | U.S.                           | Foreign | Firearm(s) | Explosive(s)                            | Foreign Fighter | Informant/<br>Undercover Agent   | Internet/<br>Email Monitoring |   |
| May 2009–November 2010         | Mohamed Mohamud                | ●       | ○          | ●                                       | ○               | ●                                | ○                             |   |
|                                | Farooque Ahmed                 | ●       | ○          | ●                                       | ○               | ●                                | ○                             |   |
|                                | Abdel Shehadeh                 | ○       | ●          | ○                                       | ●               | ○                                | ●                             |   |
|                                | Omar Hammami                   | ○       | ●          | ○                                       | ●               | ○                                | ○                             |   |
|                                | Jehad Mostafa                  | ○       | ●          | ○                                       | ●               | ○                                | ○                             |   |
|                                | Shaker Masri                   | ○       | ●          | ○                                       | ●               | ●                                | ○                             |   |
|                                | Zachary Chesser                | ○       | ●          | ○                                       | ●               | ○                                | ●                             |   |
|                                | The Rockwoods                  | ●       | ○          | ●                                       | ○               | ○                                | ○                             |   |
|                                | Alessa and Almonte             | ○       | ●          | ○                                       | ●               | ●                                | ●                             |   |
|                                | Faisal Shahzad                 | ●       | ○          | ●                                       | ○               | ○                                | ○                             |   |
|                                | Colleen LaRose                 | ○       | ●          | ○                                       | ○               | ○                                | ○                             |   |
|                                | Northern Virginia Five         | ○       | ●          | ○                                       | ●               | ○                                | ○                             |   |
|                                | al-Shabaab Recruiting          | ○       | ●          | ○                                       | ●               | ○                                | ○                             |   |
|                                | <b>Ft. Hood (Nidal Hasan)</b>  | ●       | ○          | ○                                       | ○               | ○                                | ○                             |   |
|                                | David Headley                  | ○       | ●          | ●                                       | ○               | ○                                | ○                             |   |
|                                | Tarek Mehanna                  | ●       | ○          | ○                                       | ○               | ○                                | ○                             |   |
|                                | Hosam Smadi                    | ●       | ○          | ○                                       | ○               | ●                                | ○                             |   |
|                                | Michael Finton                 | ●       | ○          | ○                                       | ○               | ○                                | ○                             |   |
|                                | Najibullah Zazi                | ●       | ○          | ○                                       | ○               | ○                                | ○                             |   |
|                                | Daniel Boyd, et al             | ●       | ●          | ○                                       | ●               | ○                                | ○                             |   |
| September 11, 2001–April 2009  | <b>Abdulkhalek Muhammad</b>    | ●       | ○          | ○                                       | ○               | ○                                | ○                             |   |
|                                | Newburgh Four                  | ●       | ○          | ○                                       | ○               | ○                                | ○                             |   |
|                                | Bryant Neal Vinas              | ●       | ○          | ○                                       | ●               | ○                                | ○                             |   |
|                                | JFK Airport Pipeline Plot      | ●       | ○          | ○                                       | ○               | ○                                | ○                             |   |
|                                | Fort Dix Six                   | ●       | ○          | ○                                       | ○               | ○                                | ○                             |   |
|                                | Daniel Maldonado               | ○       | ●          | ○                                       | ○               | ○                                | ○                             |   |
|                                | Derrick Shareef                | ○       | ○          | ○                                       | ○               | ○                                | ○                             |   |
|                                | Houston Taliban Plot           | ○       | ●          | ○                                       | ○               | ○                                | ○                             |   |
|                                | Liberty City Seven             | ●       | ○          | ○                                       | ○               | ○                                | ○                             |   |
|                                | <b>Mohammed Taheri-Azar</b>    | ●       | ○          | <b>Drove SUV into Crowd</b>             |                 |                                  | ○                             | ○ |
|                                | Sadeque and Ahmed              | ○       | ○          | ○                                       | ○               | ○                                | ○                             |   |
|                                | Toledo, Ohio Plotters          | ○       | ○          | ○                                       | ○               | ○                                | ○                             |   |
|                                | JIS Plotting in So. California | ○       | ○          | ○                                       | ○               | ○                                | ○                             |   |
|                                | Lodi Case (the Hayats)         | ○       | ○          | ○                                       | ○               | ○                                | ○                             |   |
|                                | Albany Plot                    | ○       | ○          | ○                                       | ○               | ○                                | ○                             |   |
|                                | New York City Subway Plot      | ○       | ○          | ○                                       | ○               | ○                                | ○                             |   |
|                                | lyman Faris                    | ○       | ○          | <b>Plot to Blow Torch Bridge Cables</b> |                 |                                  | ○                             | ○ |
|                                | Ahmed Omar Abu Ali             | ○       | ○          | ○                                       | ○               | ○                                | ○                             |   |
|                                | Virginia Jihad Network         | ○       | ○          | ○                                       | ○               | ○                                | ○                             |   |
|                                | <b>Hasan Akbar</b>             | ○       | ○          | ○                                       | ○               | ○                                | ○                             |   |
|                                | Lackawanna Six                 | ○       | ○          | ○                                       | ○               | ○                                | ○                             |   |
|                                | Jose Padilla                   | ○       | ○          | ○                                       | ○               | ○                                | ○                             |   |
|                                | Portland Seven                 | ○       | ○          | ○                                       | ○               | ○                                | ○                             |   |

Source: CRS analysis of open source material related to homegrown jihadist plots and attacks since 9/11.

**b) How prepared is USCIS and newly hired adjudicators to address fraud in DACA and DAPA applications?**

Newly hired USCIS employees will not be ready to adequately vet DAPA applications from a security and fraud standpoint, if they are not provided the training USCIS usually undergo. USCIS recently testified at a March 3 hearing<sup>24</sup> in the Senate that all hiring and training of new officers to handle the DAPA program has ceased, pursuant to court injunction.<sup>25</sup> They also testified that USCIS normally undergo five weeks of training; according to an Inspector General Report on the Citizenship USA program, training then was normally 16 weeks.<sup>26</sup> Even with this training, only veteran officers are normally experienced enough to detect fraud in applications.

In any case, USCIS has not disputed that their USCIS anti-fraud office is not involved in vetting DACA applications, and they have not provided Congress any statistics regarding the number, if any, of DACA applications that were rejected for fraud. In fact, according to court records, numbers were provided in court regarding DACA applications that have been rejected for a host of reasons (age, no signature) other than fraud (but apparently none for that reason).<sup>27</sup> Without adjustments, DAPA applications are slated to be processed in a substantially similar manner.

Thus, under current processing, new USCIS employees and contractors may not require much training, as vetting for fraud does not seem to be a priority. The DACA application, I-821D, on which DAPA applications will presumably be based, is a fairly simple application that asks (without verification) for biographical information, educational background, travel information, and simple security questions (“have you ever been arrested for, charged with, or been convicted of a crime in any country other than the United States?”). The official instructions for I-821D state that the applicant does “not need to submit original documents” in support of the application, and these documents can be expired.

Supporting documents simply need to show the requisite age of the applicant, continuous residence (not necessarily domiciled) in the U.S. since 2007 and physical presence in the U.S. on June 15, 2012 and at the time of application, and requisite military/ educational enrolment or attainment. As stated in testimony, the applicant must submit “proof of identity” including “any other document with photo that you believe is relevant.” Presumably, the reason for the low standard of documentary evidence in this application is because “undocumented” immigrants do not have much documentation. However, it is hard to imagine that most would not be able to obtain at least some documentation from their home country or consular office concerning their identity and date of birth. The instructions are simply vague when it comes to how much evidence is required,<sup>28</sup> or whether copies of documents that satisfy each requirement that are facially valid is sufficient. Application information is not independently verified.

<sup>24</sup> Senate Judiciary Committee Hearing, “Oversight of USCIS: Ensuring Agency Priorities Comply with the Law,” March 3, 2015.

<sup>25</sup> U.S. District Court (SDTX), *State of Texas, et al, v. U.S., et al*, Civil No. B-14-254, Feb. 16, 2015.

<sup>26</sup> Department of Justice, Office of Inspector General, Special Report, “An Investigation of INS’s Citizenship USA,” p. 21, <http://www.justice.gov/oig/special/0007/cusainp.pdf>.

<sup>27</sup> U.S. District Court (SDTX), *State of Texas, et al, v. U.S., et al*, Civil No. B-14-254, Feb. 16, 2015.

<sup>28</sup> National Standard Operating Procedures, Deferred Action for Childhood Arrivals (DACA), April 4, 2013, version 2.0, does state that evidence should be weighed under the “preponderance of evidence” standard.

**3) Are the background checks that will be conducted by USCIS sufficient to adequately vet individuals for criminal and national security concerns?**

Assuming that DAPA applicants will undergo the same criminal and national security background checks, there will still be gaps that may allow applicants with criminal histories or national security concerns to be approved under the program. As USCIS testified at another Senate hearing,<sup>29</sup> DAPA applicants will only undergo *biometric* checks and not *name* checks against FBI and other national security databases. Name checks sometimes produce different results.

This gap is in part what I alluded to in my testimony concerning the Boston Marathon bomber, who was naturalized seven months before he perpetrated his crime. He was in fact known to the FBI as a suspected terrorist, and Russian authorities provided evidence to them that he posed a danger to civilian targets, as a House of Representatives committee concluded.<sup>30</sup> DAPA and DACA applicants undergo biometric checks, meaning primarily fingerprint checks, and may result in a “hit” only if the FBI has the fingerprints of a criminal or terrorist. It does not stop an application from going forward even when checked against the entire terrorist watchlist (called TSDB or TIDE) that FBI and the National Counterterrorism Center (NCTC) maintains. This may be because there is no policy certainty as to what formally results when an application name is matched against a suspected terrorist.<sup>31</sup>

In addition, as this Homeland Security & Government Affairs Committee (HSGAC) reported in its 2011 report<sup>32</sup> on Major Nidal Malik Hasan’s shooting of 45 people at Fort Hood, Texas (13 dead), that the Joint Terrorism Task Force (JTTF) failed to share information on suspected terrorists in the past (at least in a timely manner). In that case, the government had knowledge of communications between Major Hasan and a well-known terrorist<sup>33</sup> who had previously radicalized others into taking violent action against American targets.

Furthermore, the background checks conducted by USCIS and FBI have almost no ability to check against *foreign* criminal databases. As mentioned in oral testimony, I interviewed a number of officers (some recently retired) concerning the question of whether FBI is able to check foreign databases for criminal background, and the response I received is that FBI has a relationship with INTERPOL. The Interpol database of foreign suspected criminals is limited, focused on crimes of an international nature (war crimes, genocide), and has been accused of

<sup>29</sup> Senate Judiciary Committee Hearing, “Oversight of USCIS: Ensuring Agency Priorities Comply with the Law,” March 3, 2015.

<sup>30</sup> U.S. House of Representatives, Committee on Homeland Security, “The Road to Boston: Counterterrorism Challenges and Lessons from the Marathon Bombings,” March 2014. Reuters, “Russia Warned U.S. about Boston Marathon bomb suspect Tsarnaev, report,” March 25, 2014.

<sup>31</sup> To clarify, there are many names on the no-fly and terrorist watchlists – some suspected and some known. Government agencies may not want to deal with the legal uncertainties of denying an application based on information that may not be released. Thus, it appears, USCIS applications are not vetted against the larger list.

<sup>32</sup> U.S. Senate, Homeland Security & Governmental Affairs Committee special report, “A Ticking Time Bomb, Counterterrorism Lessons from the U.S. Government’s Failure to Prevent the Fort Hood Attack,” February 2011. [http://www.hsgac.senate.gov/imo/media/doc/Fort\\_Hood/FortHoodReport.pdf?attempt=2](http://www.hsgac.senate.gov/imo/media/doc/Fort_Hood/FortHoodReport.pdf?attempt=2).

<sup>33</sup> The name can be shared with cleared HSGAC staff as needed.

bring politicized.<sup>34</sup> Although INTERPOL maintains a database of its own “Red Notices” (international arrest warrants) and has some access to some national criminal databases (in developed countries), most of the world has disjointed, highly localized, systems for cataloging criminal records.<sup>35</sup> In any case, it is not clear that the FBI automatically checks against the limited Interpol databases, and it does not appear to conduct searches beyond this.

As these forgoing issues are not well understood or well documented, they may perhaps be a good subject for study by the Congressional Research Service (CRS) or investigation by the Government Accountability Office (GAO).

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<sup>34</sup> The International Consortium of Investigative Journalists, “Interpol’s Red Notices Used by Some to Pursue Political Dissenters, Opponents, July 20, 2011, <http://www.icij.org/project/interpol-red-flag/interpol-red-notices-used-some-pursue-political-dissenters-opponents>.

<sup>35</sup> Although there is limited information or reports on various countries’ criminal databases, see <http://www.amof.info/i-criminal.htm>; there appear to be services to search some national (not local level) criminal background in some countries, but it is unclear how accurate these are; see <http://www.criminal-records-search.com/internationalcriminalrecords/international.htm>.



- 4) **On February 16, 2015, the U.S. District Court for the Southern District of Texas issued a preliminary injunction against the Administration's DAPA and expanded DACA policies. The court found that DACA applications left little discretion to the individual USCIS adjudicator. Rather, if an applicant met the qualifications of DACA they would automatically receive deferred action. What do you believe the implications of this lack of discretion will be on DAPA applicants and the Administration's executive actions in general?**

The U.S. District Court found that “from the President down to the individual USCIS employees actually processing the applications, discretion is virtually extinguished ... Nothing about DAPA ‘genuinely leaves the agency and its employees free to exercise discretion.’”<sup>36</sup> Since DACA applications are to be handled in substantially the same way,<sup>37</sup> the presumption is that the same will hold true for both these application types. Under the USCIS Standard Operating Procedures (SOPs) for DACA, the initial rejection criteria for applications is set forth (missing signature, family name, date of birth, or address; wrong fee, filed from abroad, wrong forms, or wrong age group).<sup>38</sup> Similarly, the SOPs provide for a list of stated reasons for any final denial (including wrong age group, educational criteria, abandonment, etc.).<sup>39</sup> Evidence submitted with an application is to be judged by “preponderance of the evidence” (more likely than not).<sup>40</sup> This confirms my written testimony in that USCIS officers would find it very difficult to deny an application so long as there is a facially valid application. Ironically, the Court also found, “The DHS does have discretion in the manner in which it chooses to fulfill the express will of Congress. It cannot, however, enact a program whereby it not only ignores the dictates of Congress, but actively acts to thwart them.”<sup>41</sup>

The implications from this lack of discretion is that USCIS officers must approve all applications that meet the DACA/DAPA criteria on its face (or after supplementary information is added by an applicant). The guidelines do mention fraud, and as discussed in testimony, USCIS officers are able to refer cases to the USCIS anti-fraud office, but Congressional inquires regarding how often this happened with DACA applicants, or how many applications were rejected for fraud, have met with non-responses. The Court itself found the government response on this issue lacking. Further, I am not aware of any USCIS statement contradicting testimony that the USCIS anti-fraud office was not directly involved in reviewing DACA applications as a normal process (or as normally processed). Thus, over 95 percent of DACA applications were approved, and all others were apparently rejected for mechanical omissions or failure to meet technical criteria.

<sup>36</sup> U.S. District Court (SDTX), State of Texas, et al, v. U.S., et al, Civil No. B-14-254, Feb. 16, 2015, at p. 110.

<sup>37</sup> The U.S. District Court found the same in its written opinion, U.S. District Court (SDTX), State of Texas, et al, v. U.S., et al, Civil No. B-14-254, Feb. 16, 2015, at footnote 96.

<sup>38</sup> National Standard Operating Procedures, Deferred Action for Childhood Arrivals (DACA), April 4, 2013, version 2.0, at p. 23.

<sup>39</sup> Id, at p. 249.

<sup>40</sup> Id, at p. 48.

<sup>41</sup> U.S. District Court (SDTX), State of Texas, et al, v. U.S., et al, Civil No. B-14-254, Feb. 16, 2015, at p. 99.

Further implications are that DACA applicants, and whenever or if-ever the injunction is lifted, DAPA applicants, will receive legal employment authorization, access to Social Security benefits, and certain tax benefits (as discussed at the hearing). The entry of a large number of new legal workers in the American labor market are unclear. The Department of Labor is normally involved in some sort of labor certification for most employment-based green cards and temporary specialty workers.<sup>42</sup> Most of those workers tend to be highly-skilled or educated workers, although the current law does provide for some lower-skilled seasonal workers and employment-based green cards. Until the DAPA work force enters the legal labor market, it will be difficult to determine the impact on the economy.

Other implications are that the DAPA and DACA applicants, once processed and approved, are able to compete for jobs that might provide the basis for a green card application. Or, if they had a basis for a green card prior to application (say, through a relative) but could not “adjust” their status to Legal Permanent Resident because they were not authorized to be in the U.S., they can pursue that basis once again. They may not be able to adjust their status while in “DACA/DAPA status,” but they can apply for “advance parole” to leave the country and have guaranteed re-entry in “parole” status, and thereafter apply for adjustment into green card status.<sup>43</sup> In fact, the DACA SOPs specifically provide for “advance parole” processing for DACA applicants.<sup>44</sup>

Parole status<sup>45</sup> is a method by which Customs officers may physically allow an applicant at a port-of-entry into the United States without providing a legal basis (or visa category) for that entry.<sup>46</sup> Usually provided for emergency or humanitarian grounds, parole status is increasingly used more broadly and on a larger scale; this may be because more mechanical methods of obtaining parole, such as the USCIS grant of “advance parole,”<sup>47</sup> mentioned above, are in place. In fact, such applicants may not even have to re-enter the country, as “parole in place” is increasingly used<sup>48</sup> (meaning, a DACA/DAPA applicant may simply apply to change into parole status, and thereafter, adjust to green card status). Any person who obtains a green card (Legal Permanent Resident status) can apply for U.S. citizenship after five years in that status.<sup>49</sup>

<sup>42</sup> However, this does not capture all foreign workers that eventually gain legal work status in the U.S. For example, people who obtain asylum or obtain a family-based green card, or spouses of intercompany transferees, are able to work legally in the U.S.

<sup>43</sup> This was confirmed by USCIS at a recent March 3, 2015 hearing at Senate Judiciary Committee, and by the SOPs cited earlier.

<sup>44</sup> National Standard Operating Procedures, Deferred Action for Childhood Arrivals (DACA), April 4, 2013, version 2.0, at p. 135.

<sup>45</sup> Parole is authorized under the Immigration & Nationality Act (INA), section 212(d)(5)(A). Sometimes called under labels, such as “humanitarian parole” or “advance parole,” all parole is based on this section of law.

<sup>46</sup> Theoretically, a parolee is legally still an applicant for entry into the U.S., even if physically in the U.S.

<sup>47</sup> Advance Parole is obtained through application with USCIS, and Customs officers usually accept USCIS decisions on advance parole. Therefore, someone who is given advance parole, even if not legally authorized to be in the U.S., may have essentially guaranteed re-entry into the U.S. in parole status. They can then apply for a change in immigration status.

<sup>48</sup> Christian Science Monitor, “‘Parole in Place’: Obama’s Illegal Immigration Order Stokes Amnesty Worries,” Dec. 9, 2013. <http://www.csmonitor.com/USA/Politics/2013/1209/Parole-in-place-Obama-s-illegal-immigration-order-stokes-amnesty-worries>.

<sup>49</sup> Spouses of U.S. citizens can do so after only three years.

**Post-Hearing Questions for the Record  
Submitted to Shawn Moran  
From Senator Ron Johnson**

**“Deferred Action on Immigration: Implications and Unanswered Questions”**

**February 4, 2015**

1. During his testimony on February 4, 2015 before this Committee, Bo Cooper stated “[i]f anything, I believe that DACA and DAPA programs strengthen our border security by allowing DHS to focus more of its resources on the border rather than on apprehending non-criminal individuals.” How do the President’s executive policies affect the ability of Border Patrol agents to do their jobs?

Answer - Frankly I think the President’s actions make it harder to secure the border and I completely disagree with Mr. Cooper. I have interviewed hundreds of illegal aliens over the course of my career and unfortunately there is a perception that if they can hide in the shadows long enough they will eventually be allowed to stay. This could be through marriage, the birth of child, or an extension of amnesty. Make no mistake that this belief, now reinforced by the DACA and DAPA expansion, fuels illegal immigration in this country.

2. What guidance and/or training have Border Patrol agents received in order to carry out the Administration’s executive actions?

Answer - The honest answer is that there is a tremendous amount of confusion over how we will enforce the executive order. If I physically see someone jump the border fence I will arrest them and they will be deported. The question becomes what happens if I encounter an individual in the field that I suspect is here illegally. I will still arrest them but my sense is that the CBP/ICE will not hold or deport the individual if they qualify under the DACA or DAPA expansion.

3. You touched on the disproportionate supervisor-to-Agent staffing ratio in your testimony. If we went from the current ratio of 4 or 5 Agents per supervisor to the 10 to 1 ratio you advocated, how many more Agents could we put into the field?

Answer - If we were to bring our supervisory staffing level in line with other agencies I estimate this would put another 2,000 to 2,500 Agents back into the field.

4. Senators Carper, Sasse, and I traveled to the Rio Grande Valley Sector after the hearing and I heard anecdotally from several Border Patrol officers that illegal immigrants were growing increasingly violent at the border. Do you believe this to be the case? If so, why?

Answer - I absolutely believe the border is becoming more violent and think there are primarily three drivers:

1. Cartels - Immigrant and narcotics smuggling has been taken on by large multi-national drug cartels. When I first joined the Border Patrol, these cartels did not exist and they are extremely violent compared to the smaller primarily family run smuggling groups that used to dominate the border.
2. Criminal Aliens - Approximately 10-20% of the aliens we arrest are criminal aliens. By this I mean that these are individuals who have committed crimes in the U.S., served time in a jail here, and have been deported. These are not economic immigrants in search of a better life. These are hardened criminals who are facing real jail time when we catch them and they will not think twice about assaulting an Agent to get away.
3. Lack of prosecution - Assaulting an Agent is a federal crime yet one that is rarely prosecuted by U.S. Attorneys, in my opinion, unless the injury to the Agent is life threatening. Unfortunately the smugglers and criminal aliens are acutely aware of this fact and this diminished deterrent impacts an Agent's safety in the field.

**Post-Hearing Questions for the Record  
Submitted to Shawn Moran  
From Senator Claire McCaskill**

**“Deferred Action on Immigration: Implications and Unanswered Questions”**

**February 4, 2015**

Border Patrol Officers have a difficult and critical job in securing the border and ensuring our national security.

- 1) How would morale be affected by a shutdown of the Department of Homeland Security?

Answer - It would be yet another blow to morale at the agency. Although the NBPC strongly disagrees with the actions that the Administration took last November, the solution to this dispute cannot be not paying the people who are providing border security. Our Agents have mortgages, car payments, and tuition to pay, just like everyone else.

- 2) How will funding DHS with a continuing resolution affect planned FY 2015 hiring and procurements?

Answer - It will vastly limit the ability to hire and train new Agents as well as maintain the continuing training the Agents receive throughout the year.

It is my understanding that border patrol agents will not be furloughed in the event of a shutdown.

- 3) What effects, if any, will there be in the processing of paperwork, deportations and removal of families and individuals from detention facilities?

Answer - Deportation and removal are the jurisdiction of Immigration and Customs Enforcement (ICE) and I would direct your question there. However, there is an impact to the furlough of non-essential staff to our operations. Without this personnel present we will have to reposition Agents to assume their responsibilities where needed and this will pull manpower from the field.

U.S. Customs and Border Protection will be the recipient of billions of dollars in additional funding for border security if Congress passes an immigration bill.

- 4) What lessons learned from previous technological solutions to securing the border can be applied to any future acquisition programs?

Answer - The NBPC believes that SBInet was an unmitigated failure. There are a number of reasons for this that have been well documented by both this Committee and GAO. I think the primary issue is that neither Boeing nor CBP actually asked the line Agents what technologies suites would be useful in border security.

- 5) How, if at all, does CBP assess the relative effectiveness and cost efficiency of hiring additional border patrol officers or issuing a request for proposal for a technological solution?

The current FTE floor is set by the DHS appropriations bill and I am not aware of what, if any methodology, CBP may have related to manpower. Part of the challenge is that the whole issue of Border Patrol effectiveness is highly charged. If you ask top management at CBP how effective we are they will tell you we apprehend 75% of the illegal immigrants. If you ask any line Agent, he or she will tell you that we probably catch only 30-40% of the illegal immigrants.

Procurement has, and continues to be an issue, an issue at CBP. For example, CBP is testing body cameras right now but my understanding is that they are only testing Taser's and not testing other manufacturers' devices.

## VISA WAIVER PROGRAM: IMPLICATIONS FOR U.S. NATIONAL SECURITY

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THURSDAY, MARCH 12, 2015

U.S. SENATE,  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:02 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Lankford, Ayotte, Ernst, Sasse, Carper, Booker, and Peters.

### OPENING STATEMENT OF CHAIRMAN JOHNSON<sup>1</sup>

Chairman JOHNSON. Good morning. This hearing will come to order. I want to welcome all the witnesses here. We have some excellent people here to describe the Visa Waiver Program (VWP), both the benefits and the potential vulnerabilities. I do not want to spend a whole lot of time because we have two panels, but just basically point out this is a program that dates back to 1986.

The first countries that entered into this cooperative type of arrangement with the United States was the United Kingdom and Japan, and currently we have 38 different countries that participate in this program. It obviously was designed to ease travel, to promote commerce, and I think it has done a really good job. Today 19 million visitors enter the United States using this program for a period of under 90 days. It is about 40 percent of everybody that comes to America, so you can see the significance of this program.

Unfortunately, with the threats we face today, particularly with the Islamic State of Iraq and Syria (ISIS), one number being used is 3,400 foreign fighters that are from the West. We have to review this program for potential vulnerabilities. But I think it is safe to say that the standards have been created after September 11, 2001. When we took a look at this and tried to strengthen the security standards with our participating partner countries, I think there is a great deal to be said in terms of enhancing security.

So, again, the purpose of this hearing is to lay out that reality, to fully explore the benefits, and to look at potential vulnerabilities caused by these new and emerging threats. Also we want to consider if there is anything we can do to help Secretary Jeh Johnson in his efforts of keeping this Nation safe, see if there is something we need to do legislatively.

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<sup>1</sup>The prepared statement of Senator Johnson appears in the Appendix on page 209.

On that end, I appreciate Senator Ayotte's dedication to this and joining in the letter with myself and Ranking Member Carper, again, offering our willingness to work with the Secretary to strengthen this program.

So, with that, I will end my comments and turn it over to our Ranking Member, Senator Carper.

#### **OPENING STATEMENT OF SENATOR CARPER<sup>1</sup>**

Senator CARPER. Thanks, Mr. Chairman, and, Kelly, thank you for suggesting that we have this hearing.

Mr. Secretary, nice to see you again. I would be interested to know how many times you sat at this table, but we are grateful you are willing to do it again today. And to Marc and to Brian, thank you all for joining us today.

As the Chairman said, this is an important hearing, and the Visa Waiver Program, which has been around for actually quite a while, continues to evolve and to hopefully be improved. It is a valuable economic and security tool for our country.

Congress and the Department of Homeland Security (DHS), which you once led, have worked hard to balance the natural tension in the Visa Waiver Program between the need to facilitate, on the one hand, international travel and, on the other hand, trying to make sure that we are going to be safe in this country from the evolving terrorist threats that we all face.

When travelers from Visa Waiver countries visit our country, they spend more than \$80 billion every year. That is a lot of money. They stay in our hotels, they buy our goods, they visit our parks, they visit our national parks, they visit our five-star beaches, they eat at our restaurants, and do a lot of other things as well. They do a lot of those things in Delaware, I might add. All in all, the Visa Waiver tourists support more than a half million American jobs.

But the Visa Waiver Program is more than just a revenue generator. It also serves as an important national security tool for our country. When countries participate in the Visa Waiver Program, they must implement and maintain strong travel screening measures. More importantly, these countries must share robust amounts of traveler information with the United States—information that we would likely not otherwise get. This valuable information has proven to be essential to our counterterrorism officials as they seek to prevent foreign threats from crossing our borders.

With that said, the threats that we face from terrorists have evolved during the life of this program. When the Visa Waiver Program was enhanced in 2007, the preeminent threat to our homeland was from al-Qaeda's central branch led by Osama bin Laden. As we know, today bin Laden is no more. al-Qaeda's core branch in Afghanistan and Pakistan has been severely weakened. But in their place, al-Qaeda splinter groups in places like the Middle East and in Africa have arisen and adopted new tactics that pose new threats for our country.

Today, we face the threat posed by ISIS and its determination to use social media to rally recruits and to incite attacks against

<sup>1</sup> The prepared statement of Senator Carper appears in the Appendix on page 210.



the West, including attacks by individuals who live in Visa Waiver countries. Moreover, conflicts in Syria and Iraq have attracted thousands of foreign fighters from all across the world who have now joined the ranks of those who wish to do us harm here at home. According to reports, more than 3,400 foreign fighters have traveled from Western countries to join in these conflicts. Many of these countries have Visa Waiver privileges with the United States.

As the number of foreign fighters grows, so do the concerns that the fighters from Western countries may use the Visa Waiver Program to bypass our screening efforts at consular posts abroad, where State Department officials have the first opportunity to identify dangerous travelers. Late last year, the Department of Homeland Security took steps to enhance the requirements of the Visa Waiver Program to directly address the new threats that we face. I commend the Department for proactively taking these measures.

This hearing is an opportunity for us to examine the Visa Waiver Program more closely and to see if there are some additional steps that we can and should take to improve the program and to ensure that it continues to evolve and adapt as our enemies and their tactics do the same. We will never make the program perfect, but our goal should be to see if we can create, to paraphrase our Founding Fathers, a more perfect program.

This hearing is also an example to remember that the Visa Waiver Program does not exist in a vacuum. There are many layers to the Department of Homeland Security's system for securing our borders. That includes robust intelligence collection and analysis, passenger prescreening, and inspections by Customs and Border Protection (CBP) officers at our ports of entry (POE). Each of these layers contributes to our overall security.

But we should strive for smart improvements where we can. With each of the Department's key programs, however, we must strike the appropriate balance between security and commerce, between risk and opportunity.

Again, we appreciate you holding this hearing, Mr. Chairman, and for all who have joined us here today. And, again, thank you, Kelly.

Chairman JOHNSON. It is the tradition of this Committee to swear in witnesses, so if you will stand and raise your right hand. Do you swear that the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. CHERTOFF. I do.

Mr. FREY. I do.

Mr. JENKINS. I do.

Chairman JOHNSON. You may sit.

Our first witness will be the Honorable Michael Chertoff. Mr. Chertoff served as Secretary of the Department of Homeland Security from 2005 to 2009. Currently he is the executive chairman and co-founder of the Chertoff Group.

Mr. Secretary, please proceed.

**TESTIMONY OF THE HONORABLE MICHAEL CHERTOFF,<sup>1</sup> CO-FOUNDER AND EXECUTIVE CHAIRMAN, THE CHERTOFF GROUP**

Mr. CHERTOFF. Thank you, Mr. Chairman, and thank you, Ranking Member Carper. It is a real privilege to be back in front of this Committee again, and I am delighted to be of assistance here. I would just observe that my views here are based on my experience as Secretary of Homeland Security as well as the experience I have had since I left, and as the Chairman pointed out, I do chair a security and risk management company that advises on a wide range of security matters, including some of those that are touched on here.

I think as both the Chairman and the Ranking Member pointed out, we obviously are at a dangerous period of time now. And to go back to the Visa Waiver Program, at the time it was first created, it was when we were mainly focused on the issue of people coming into the United States and overstaying their visas. And we were looking to find out a way to maybe expedite for those countries where the risk of overstay was considered to be low.

After September 11, 2001, obviously the issue of terrorists and violent actors coming into the country became a much more important feature of what we do with our border security program. And certainly now with the spread of Islamist terrorism in other parts of the world and the issue of foreign fighters, it is a very opportune time to look at the program and make sure that it is operating robustly.

I think the good news is that the program, as Senator Carper said, is part of a series of layers. While we do not have the interviews you have when you typically give visas out, we have many more tools that we put into place since September 11, 2001 that give us good visibility into who comes into the country. And, in particular, there are three tools I would want to talk about.

One is the Electronic System for Travel Authorization (ESTA), which we put into effect when I was Secretary of Homeland Security. Secretary Johnson recently added some additional information to be collected, and the purpose of this is to allow us to get some advance notice of people who are eligible to come in under visa waiver, but as to whom with some biographic data we can run against various intelligence databases. And that gives us a little bit of early warning and an ability to triage with respect to people that need a closer look.

In fact, just earlier this year, somebody seeking to come across the land border who was a person of interest was able to be observed and detained because we had that advance word from the ESTA Program. So that has worked as an effective tool in giving us some advance warning for our intelligence analysis.

Added to that is the collection and analysis of Passenger Name Record (PNR) data. That is data that is collected by the airlines. It includes information about contact, telephone numbers, residence, past travel, method of payment, and how payment is executed. And, again, these data items, although they are not particularly intrusive, when added to the intelligence we collect from a

<sup>1</sup> The prepared statement of Mr. Chertoff appears in the Appendix on page 212.

wide variety of other sources, give us an ability to show linkages between people coming into the United States and others who we know to be terrorists.

In fact, we ran an experiment when I was Secretary looking back at the 9/11 hijackers to see whether we would have been able to establish links among them had we had the PNR program in effect at the time that they were coming into the country. And at least 11 of them we would have seen connected to each other and connected to potential terrorists. So this is a program that works, and it creates an additional layer of defense.

Finally, as members of the Committee know, we have the US Visitor and Immigrant Status Indicator Technology (US-VISIT) Program. We now collect biometrics when people arrive at the port of entry. We have very skilled Customs and Border Protection inspectors who use their ability to question people as an additional way of ferreting out risk. And these layers taken together I think have been quite successful, if we look back historically, in keeping dangerous people out of the country.

I should observe, of course, this does not address the issue of U.S. citizens who might be coming back from other places in the world. They obviously do not have to give their fingerprints. We do get their Passenger Name Record data, and that also gives us at least some ability to screen them as well.

There are a couple of other things we are in the process of doing and can do to, again, further shore up our security. One is to expand preclearance overseas. Currently, preclearance is available in 15 foreign airports in 6 countries, and that, just for the record, is a system in which people essentially go through the customs and immigration process before they get on the airplane. That not only gives us more time to evaluate people, but it actually enhances aviation security because we can use some of the tools we use at the border before people get on the airplane.

I also have to say that it is critically important to continue to support our intelligence collection measures, which are a very important tool in doing what we do to secure the border.

Let me conclude by just making two observations. Senator Carper rightly pointed out the economic benefits that accrue from the Visa Waiver Program, but there is also a national security benefit. I have had the occasion to be over in Eastern Europe and in Central Europe over the past year, and it is no secret that Vladimir Putin is putting on a very big push to try to woo Eastern and Central Europeans away from the alliance with the United States. And there is a lot of anti-Americanism now which he is propagating in the region.

One of the best tools we have to keep the hearts and minds of the Central and Eastern Europeans oriented to the West and to the United States is the Visa Waiver Program. Every time I go over, I hear from people how grateful they are and how much it means to them to have been admitted to the program. To them it is the final badge of having joined the West. And for us to undercut that program would be giving Putin maybe the best gift he could get from a propaganda standpoint. And so I think from that perspective as well, this is a very important program for the United States.

Thank you very much. I am happy to answer questions.

Chairman JOHNSON. Thank you, Mr. Secretary.

Our next witness is Marc Frey. He is the Senior Director at Steptoe & Johnson LLP and former Director of the Visa Waiver Program. Dr. Frey.

**TESTIMONY OF MARC E. FREY, PH.D.,<sup>1</sup> SENIOR DIRECTOR,  
STEPTOE & JOHNSON LLP**

Dr. FREY. Thank you, Chairman Johnson, Ranking Member Carper, Members of the Committee. It is an honor to be here today, in particular to be on this distinguished panel. I was at the Department directing the Visa Waiver Program during the time we implemented many of the reforms that the Secretary just talked about, and so I want to spend a few minutes this morning talking in a little bit more depth about those reforms, because as you both noted, this is a timely hearing, and it is our responsibility to continually evaluate security programs like the VWP to see what we can do better and make sure that they are adapted to the current threat environment.

I think the good news in this case is that there is a history of Congress and the Executive Branch working together with the VWP to do just that, most notably in 2007, and that led to some of the enhancements like ESTA and a few others, which I want to spend a few minutes talking about, because, in my view, education about the VWP is critical. How it works, it is often misunderstood. Perhaps that has something to do with the name. People think “waiver,” and the view is, well, you can just wave a passport and get on a plane and come to the United States and security requirements are waived as part of the program.

As the Secretary indicated, and as I am sure we are going to hear from other panelists, that is precisely the opposite of the case. The Visa Waiver Program does waive a consular interview, but it puts a number of other security measures in its place to compensate for that. And it puts requirements on both individual travelers and, equally important, on the countries that they come from. So I just want to spend a minute or two talking about what those additional security requirements are so we can fully understand what the Visa Waiver Program does and use that as the basis to think about common-sense improvements to it in today’s environment.

So the first security component I would mention is ESTA. The Secretary already pointed to this Electronic System for Travel Authorization that allows individualized prescreening of travelers, so we know when they are coming, they have to go online and submit information, and DHS runs that against a number of security and law enforcement databases.

The Visa Waiver Program also mandates information and intelligence sharing with participating countries, and that is good on its own, but it is equally—or it is even better, I should say, in part because DHS is able to use that information to inform the ESTA vetting, the idea being that the United Kingdom or France, for example, would have a better idea of the bad guys in their country

<sup>1</sup> The prepared statement of Dr. Frey appears in the Appendix on page 219.

than we would, and they are required to share that information with us, and we use that to improve our vetting and screening processes.

The third element that I think is important to talk about is the secure travel documents, in particular the electronic passports incorporating biometric elements—fingerprints and digital photographs—that help assure identity of travelers under the Visa Waiver Program. If you are coming from a non-visa waiver country, you do not have these same documentary requirements to ensure secure passports.

And the final thing—and this often gets lost—is the Visa Waiver Program mandates audits and assessments of participating countries, both prior to designation and then continuously during—at least every 2 years to maintain eligibility. And having participated in quite a number of these assessments, they are in-depth. A DHS-led interagency team goes to the country for perhaps as long as a week, meets with counterterrorism officials, security officials, views aviation security procedures, border security procedures, passport production and issuance procedures, and that not only gives us visibility into how member countries operate these systems; it also gives us the opportunity to suggest improvements if the audit finds things that are lacking or that are not up to U.S. standards. And that is an extraordinarily powerful tool to ensuring that these standards in these countries and global travel standards more broadly are up to our standards.

So with that as a background, I would say there are things that we can do with respect to the Visa Waiver Program. We have already talked about one of them. DHS last fall added new data fields to ESTA to help with the screening. I think that is a good idea and something that can continually go forward as we find we need more information to improve the vetting. There are other things that can be done such as tightening some passport security requirements. There is a small loophole in the current program that allows an increasingly small number of travelers in the program not to have these electronic passports.

We can take some measures that were formerly discretionary in the law but which are, in fact, implemented by DHS in practice and make them mandatory to increase DHS' leverage over these countries if we find something. And we can talk about more of those during the question-and-answer period. I would just reiterate what the Secretary said in particular. There are ways to reform the program sensibly, but we should not lose sight of the fact that it works, and we should not lose sight of the fact that steps to end, suspend, or terminate the program would have security consequences that would really undermine our security, to say nothing of our diplomatic relationships and our economic security as well.

So with that said, thank you again for letting me testify today, and I look forward to answering any questions you may have.

Chairman JOHNSON. Thank you. I mispronounced your name Dr. Frey. I apologize.

And I have also been made aware of the fact that the Ambassador of Poland, Ambassador Schnepf, is in the audience as well, and I realize that Poland has certainly an interest in this hearing as well, and I think we are sensitive to that.

Our next witness is Brian Jenkins, a Senior Adviser to the RAND president at the RAND Corporation. Also, he is a Research Associate at the Mineta Transportation Institute, where he directs the continuing research on protecting surface transportation against terrorist attacks. Mr. Jenkins.

**TESTIMONY OF BRIAN MICHAEL JENKINS,<sup>1</sup> SENIOR ADVISER  
TO THE PRESIDENT, THE RAND CORPORATION**

Mr. JENKINS. Chairman Johnson, Ranking Member Carper, distinguished Members of the Committee, thank you very much for the opportunity to address this important subject today.

The written testimony I have provided addresses two fundamental questions: One, what is the threat posed by Western fighters who have joined jihadist fronts in Syria and Iraq? And, two, what can the United States do to enhance its ability to identify and intercept returning foreign fighters with passports from European and other countries that are currently covered by the Visa Waiver Program?

Let us begin with the threat. Syria's continuing civil war, the military victories achieved by the Islamic State of Iraq and the Levant (ISIL), and, above all, ISIL's announced re-creation of the Caliphate have attracted would-be jihadist warriors from around the world.

According to the latest estimates, 20,000 foreign fighters have gone from other countries to fight in Syria and Iraq. Most are believed to have joined ISIL. If that number is close to correct, then foreign fighters now comprise a large portion of ISIL's total strength. Most of these are volunteers coming from other Arab countries, but more than 3,000 come from Europe and other Western countries and, therefore, may be eligible to enter the United States without a visa.

This is a dangerous bunch. ISIL recruits individuals who are not repelled by graphic images of mass executions, beheadings, burnings, and who indeed may be attracted by the opportunities to participate in that kind of violence. And that is going to pose a long-term terrorist threat.

For now, rather than sending fighters abroad, ISIL appears more focused on the expansion and defense of the territory it controls as the Islamic State. However, ISIL may at some point alter its strategy and, of course, its defeat could shatter the enterprise into a host of small, desperate groups bent upon revenge.

Some ISIL fighters will migrate to other fronts. Western volunteers may try to come home. Fortunately, the number of individuals coming from the United States to jihadist fronts is low, between 100 and 150, according to the most recent estimates. They add a layer of threat, but given they are still modest numbers, it is manageable, I think, within existing law and resources. And as our focus here is on visa waiver, returning Americans are a separate problem, although one that should be part of an overall strategy.

As Secretary Chertoff has pointed out, there are several lines of defense, each of which offers opportunities to intercept foreign

<sup>1</sup> The prepared statement of Mr. Jenkins appears in the Appendix on page 228.

fighters. The first consists simply of all international efforts, here and abroad, to reduce the number of volunteers going to jihadist fronts. Second, the United States could also and is pushing to increase international efforts to prevent their return, not come back here but simply to come back to their countries of origin. Right now, Turkey is key to stemming that flow.

Meanwhile, intelligence sources may identify groups engaged in planning terrorist attacks against the West and try to disrupt their plots there instead of here.

Lists of names derived from intelligence sources are currently the primary mechanism for identifying returning foreign fighters. We need to be sure we know who has gone and who has come back.

Now, America's visa waiver partners do share our concerns. In the wake of the recent terrorist attacks, European nations have taken steps to reduce radicalization, improve intelligence, increase criminal penalties, impose administrative measures to prevent travel, and enhance information collection and sharing.

The Electronic System for Travel Authorization offers the rough equivalent of a visa application, and information through ESTA, as the Secretary has mentioned and Dr. Frey has mentioned, is checked against terrorism databases. Matches have been found, preventing potential terrorists from entering the United States.

Pre-boarding passenger screening also offers possibilities. We currently rely on matching names with current watchlists. What about the instances where we do not have a name on a list?

The Transportation Security Administration (TSA) has invested in a number of measures aimed at screening and behavioral detection training. There are a number of new technologies based upon detecting subtle physiological responses to prompts. These are in development, but we still do not have an X-ray for a man's soul.

Instead of flagging those who may pose higher risk, we can try to identify populations of passengers who pose minimal risk, thereby allowing security officials to more efficiently focus their efforts.

Preclearance procedures, which the Secretary has mentioned, allow passengers to complete immigration and customs formalities before boarding. They provide opportunities for observation and interviews.

Arrival screening and secondary interviews by U.S. immigration and customs officials offer the final line of defense before entry into the United States. And if all else fails, arriving terrorists would still have to acquire weapons or explosives here, which would increase their risks of exposure to domestic intelligence efforts.

Now, no doubt many of these elements, as has been mentioned, are already being examined by those in government. But from the perspective of congressional oversight, it is worth asking whether such examinations are, in fact, occurring, and the challenge for us will be to integrate them into a national strategy.

Thank you.

Chairman JOHNSON. Thank you, Mr. Jenkins.

I will start with the questioning. We are comparing a Visa Program versus a Visa Waiver Program. I would like whoever thinks they are best to answer this question. I want that exact comparison. Mr. Jenkins, you talked about lines of defenses. Compare, for example, what happens today in Poland where they do not have a

Visa Waiver Program in terms of one of their citizens trying to get into the United States. What are they going through versus what is a citizen of the United Kingdom going through? And where is the enhanced security versus where are the vulnerabilities of going through the actual visa process versus the visa waiver? Let us start with you, Secretary Chertoff.

Mr. CHERTOFF. I would say, Mr. Chairman, the main difference is in the interview. What ESTA does in effect is it collects the same basic information you would normally collect in a visa process, but you will have an interview with a consular official if you are in a visa country. That often tends to be, from a scheduling standpoint and a distance standpoint, a little bit of an impediment, which is one of the reasons countries like to be in the Visa Waiver Program.

Now, does an interview at the time of the visa add something? Yes, although we do interview people when they come into the United States, and if we do preclearance, we interview them before they board the plane.

Is the interview foolproof? No. I mean, if you look back to 9/11, some of the hijackers got into the country with visas. They were obviously interviewed.

So I would say the marginal value of the interview, at least as it relates to terrorism issues, is to my mind not great. And remember, the process of having these kinds of interviews originally began at a time we were focused on people who were going to overstay. They were going to come to the United States and not leave, and they did not have a job at home, although, I do not want to understate the value of the interview, particularly in some countries. And I know we have, for example, DHS personnel in some of the Middle Eastern countries who do some interviewing and some work with the local intelligence agencies. I think at least as it relates to Western Europe, it is of marginal value. But the measures put in place since then coupled with our better intelligence analytic capabilities I think largely closes that gap.

Chairman JOHNSON. During those in-person interviews, basically do we fill out an ESTA application so that the result of that is you basically go into the exact same process, exact same security system as we have with the Visa Waiver Program but you just have that additional in-person interview? Is it the exact same way that way, or are there differences? Dr. Frey, you are shaking your head.

Dr. FREY. Yes, I am sorry. I am nodding. Yes, Chairman, that is generally right. I would say a couple of points to that.

One, the VWP deals with one particular category of visa, the so-called B visa for business or tourism purposes up to 90 days. So even in visa waiver countries, if personnel are coming for other reasons, they still have to go through the visa process. Just so we are clear on the scope of what we are talking about. And ESTA gives us and gives the government enough information to run the vetting against the same databases that the visa applicants are run against. There are other questions on the visa form, but most of those related, as the Secretary noted, to economic issues, do you have a job at home, do you have a house, things like that. And so the vetting is precisely the same. And then once you are done with that process, the layers that we have been hearing about that CBP performs, the PNR vetting, the airline information vetting, the vet-



ting done at the ports of entry, that is precisely the same for all travelers, whether they come with a visa or with a Visa Waiver Program.

And I guess the final thing I would add, for an apples-to-apples comparison, is the interview, which, again, you should not discount the interview, but that happens the first time you apply. And many of these citizens from these countries get 10-year visas that are good for multiple entries during those 10 years.

So after that first time, it is essentially like VWP anyway without the additional ESTA every 2 years.

Chairman JOHNSON. With 40 percent of travelers going through the Visa Waiver Program, with that statistic, with that reality right now, are we already having backlogs in certain embassies in terms of the non-visa waiver countries where there may be pressure on embassy and consulate personnel to quickly do an interview and not be as thorough as what might be required with the Visa Waiver Program? Is that a possibility? And if we were to move away from a Visa Waiver Program, would we start overwhelming the system and potentially reduce security? Mr. Jenkins.

Mr. JENKINS. In all of these matters of the screening processes and intelligence processes, volume is an issue. And if we were to take the statistics that were cited at the introduction to this hearing, if we were to take the 19 million people currently traveling to the United States on the Visa Waiver Program and dump them back into the consular interview process, we would either have a tremendous backlog or we would end up really overwhelming the consular capability to handle that kind of volume, and then you worry about an erosion of performance.

So while I agree that the interview process is an important component to expand its capacity to deal with the kinds of volumes that it would be faced with, it would not guarantee us necessarily an improvement in performance.

Chairman JOHNSON. I am concerned right now. Are there countries where there is such a backlog? Have you heard reports where people are not being thoroughly interviewed, where even just the visa system itself might create a greater security risk than having a Visa Waiver Program?

Mr. CHERTOFF. I think probably the State Department is best positioned to answer this, but I have certainly heard over the years in certain countries complaining about long wait periods, the lack of availability of consular offices in remote areas. I think they have moved to some degree to doing it via, telepresence of some kind. But all these things do wind up—there is a risk of eroding the value of the interview. And, again, the more skilled the person trying to get in is, the harder it is to detect it.

So there is no question that dumping more people into the system would run the risk of actually affecting even those interviews that continue to operate in visa waiver countries because, as Dr. Frey said, we do interview for visas other than the quick tourist or business visa.

Chairman JOHNSON. OK. Well, Mr. Secretary, I went a little over time. I know you have to leave for a plane. Having been the Secretary—boy, I just lost my train of thought in terms of what I

wanted to ask you. I am not kidding. I will come back right after Senator Carper.

Senator CARPER. Where are you going on the plane?

Mr. CHERTOFF. I am headed to the Midwest.

Senator CARPER. All right. Good.

Mr. CHERTOFF. I do not need a visa to go there.

Senator CARPER. Good. I just want to follow-up on the Chairman's question. Folks on our Committee here and my staff hears me say ad nauseam, find out what works, do more of that; find out what does not work, do less of that. And I like to quote the former football coach for the Green Bay Packers, Vince Lombardi, who used to say, "If we are not keeping score, we are just practicing." So I want to talk about keeping score. I want to talk about how we measure success and how do we know that this is a successful program, and that would be just for you, Dr. Frey, and Mr. Jenkins. How do we know this is working?

Mr. CHERTOFF. Well, I guess the best measure is we have had very little penetration into the country by people who have been able to evade our current systems and come in and carry out terrorist acts. I lived through the 2006 aviation plot, which, as you will recall, involved efforts to blow planes up, I guess a dozen planes going from Heathrow to the United States. That was foiled in Great Britain. But we were able to use the data and the information that we had collected using these kinds of systems like PNR to assure ourselves there were no people operating in the United States and to allow us to restore the aviation system very quickly.

To be honest, the cases we have had here where people have carried out or attempted to carry out terrorist attacks have largely been U.S. citizens or people who are permanent residents who do not go through that system.

So I think that is the best measure of success. As I indicated earlier, I had a recent example this year of somebody caught from this system. I think the PNR data has generated our stopping people or preventing them from coming in. I do not have the most recent statistics, but I do know that we monitor those things very carefully to make sure that the program is effective.

Senator CARPER. All right. Thanks.

Dr. Frey, do you want to add anything or take away anything there?

Dr. FREY. Thank you, Senator. I guess I would just add that if you are looking to measure success, let us think about examples over the last few years or perhaps even decade of people abusing the Visa Waiver Program and posing a security threat. And, frankly, I cannot think of one except going all the way back to Richard Reid, the so-called Shoe Bomber. When was that? December 2001, well before any—not any, but most of the security enhancements we have been talking about today were put into place. And, in fact, it was incidents like that which led to precisely these security enhancements.

So I would say that the measure is that it has now been a decade and a half or so since we have had at least a public issue with respect to someone trying to abuse the Visa Waiver Program.

Senator CARPER. Good.

Mr. CHERTOFF. And I would actually add one thing, because we did have the so-called Underwear Bomber in 2009, but he came from a non-visa waiver country. He was based in Nigeria. So, again, even getting a visa is not a foolproof system.

Senator CARPER. All right. Thanks.

Mr. Jenkins, do you want to add anything, just briefly?

Mr. JENKINS. No, just the analytical problem here. It is always difficult to measure success because we cannot count things that do not occur. But the fact is if we do look back at the history, let us say, going back to 9/11, No. 1, most of the events that have occurred here have been carried out by U.S. citizens, and it has not been—with the exception of the one event that Dr. Frey talked about, we have not had people coming in on visa waiver that have carried out attacks in this country.

Senator CARPER. OK. This program has been around for a while, as we said earlier, and each of you has mentioned enhancements that have been made to it. This is not our grandfather's Visa Waiver Program. It is quite different.

In addition to the enhancements that have been made, each of you has mentioned—one or two of you have mentioned enhancements that perhaps could be made or should be made. One of the things I like to do in a hearing of this nature with smart witnesses, experienced witnesses, is to see if there is any consensus among the three of you as to what further we should do or the Department should do to make it even better?

Mr. CHERTOFF. Well, again, I think from a legislative standpoint, I think Dr. Frey pointed out that there are some things that are discretionary on the part of DHS that putting into law has some particular value, and that is because particularly when we require other countries to cooperate with us, supply information or things of that sort—and I spent a considerable amount of time when I was in office negotiating with other countries—sometimes having a legislative requirement as opposed to an administrative requirement gives you a little bit more leverage to say, look, we have to do this, it is a matter of law.

So to me, I think it is a great area where the Department can cooperate with the Committee and say, look, here are some areas that we would like to pursue; if they can be embodied in an authorization bill, that will give us a better ability to work with countries overseas and make sure they cooperate with us.

Senator CARPER. Thank you.

Dr. Frey, same question. And you can agree. You can just say, "I agree with him."

Dr. FREY. Well, of course I do. [Laughter.]

I do think that is right. I think there are some things DHS can do and has done on their own, and we have talked about the changes to ESTA, and I think they can continue to do things like that, and should.

But, for example, one of the things where they probably could do it by themselves but where legislative backing would be useful is closing this passport loophole that I mentioned. And just to discuss that very briefly, all Visa Waiver Program travelers for the most part are required to use these electronic passports. There is a small percentage who have a passport issued prior to October 2006 that,

because of the way the law was implemented, were grandfathered in. That number is decreasing every day because those passports are expiring, and once you have to get a new one, you must get an electronic passport. But there are still people who potentially have one of these older-style passports.

DHS could probably decide to change that policy on its own, but that may be—because it will affect a number of people, may be something that legislation helps.

Senator CARPER. Good. Mr. Jenkins.

Mr. JENKINS. First would be fully exploiting the PNR data that we get. I served on the White House Commission on Aviation Safety and Security, and we had recommended the introduction of the Computer-Assisted Passenger Prescreening System, which worked for a while, but it has been changed over the years. It depended primarily on information from the PNR.

The PNR itself is being changed in Europe. They are adding fields to it, and they are looking at longer periods of retention, and we should make sure that we are able to take advantage of the improvements that they are making, and that we look at how we can tweak or develop algorithms that will enable us to focus on the specific issue of returning foreign fighters, not simply those, as we used it before, who might sabotage an aircraft or hijack an aircraft, but looking specifically at that issue.

The other thing is that the United States is a big, complex government, and it has all of these bits and pieces. You really have to think of how we can take all these pieces and incorporate them into a national strategy focused on this specific issue. So making sure all of the components are working together to contribute to an overall strategy of intercepting foreign fighters I think is something we need to look at.

Senator CARPER. Great. I am going to slip out. We have a Finance Committee hearing going on right now on tax reform, and it is an ongoing hearing. It has been going on about 20 years, so I want to be a part of that. But I will be back in. So if I miss you before you leave, thanks a million. Thanks for your service to our country. Good to see you all. Thank you.

Chairman JOHNSON. Thank you, Senator Carper. My senior moment passed almost immediately. The reason I wanted to catch the Secretary before he leaves, coming from a manufacturing background, I am familiar with ISO certification, and that occurs—I think the full audit is once every 2 or 3 years, but then you have 6-month surveillance audits. In testimony in prior meetings, these evaluations, these audits, occur every 2 years. Would it be much of a burden to go in with a skinnied-down team, at least doing a surveillance audit every 6 months just to keep things up to date? Would that have value or would that be too great a burden on the Department? Would that be a good idea?

Mr. CHERTOFF. I think in terms of the Department's current resources, you will have to ask them in terms of, obviously we are all living in a time of budget discipline, and all these things cost money. I think, within reason, increasing the frequency at least of light surveillance audits always adds value. The challenge is, of course, if you are overseas and dealing with host countries, they have their own issues. But I think in principle, at least asking the

question and saying what additional could be done between 2-year periods is a good way of remediating problems that may be cropping up that you are not aware of. And I would say that after what happened in Europe in the last few months, the Europeans may be more in a mind-set to work with us on that than would have been the case perhaps a couple of years ago.

Chairman JOHNSON. Thank you. Senator Ayotte.

#### OPENING STATEMENT OF SENATOR AYOTTE

Senator AYOTTE. I want to thank the Chairman for holding this hearing, and I want to thank all of you for being here today. And I wanted to get your thoughts on the issue of the roughly 3,000 estimated so-called Western foreign fighters that would include even countries, like France and others in the European context. The issue that troubles me I do not think goes directly to the Visa Waiver Program, but I think all of you can help me understand how it fits with that and what we can do about it, and that is the issue—if you look at, for example, the Charlie Hebdo attacks, you have individuals in France, but the allegations are that some of them traveled to Yemen to get training with al-Qaeda in the Arabian Peninsula.

So those borders are relatively porous. Whether you are trying to go into Syria through Turkey or some other means or you are slipping into Yemen, how do we get at information and how does the Visa Waiver Program assist us or not assist us overall in not only, where is your country of origin, where is your home, what are you doing right now, but to indicate whether they have country hopped and whether they have traveled to other countries and received training?

Now, to me, that goes to the heart of intelligence, and I will tell you, Secretary Chertoff, in having in both classified and unclassified settings asked our intelligence officials about this issue, we are not getting full information. They cannot tell me—they know more about the American citizens than they do necessarily about the Europeans. And so if you can help me understand, how do we in the context of the Visa Waiver Program look at that particular country-hopping issue, to have the information, to ensure that we know what someone's history is when they come in?

Mr. CHERTOFF. This is a challenging area, and I think you are quite right to focus on it. Part of it is, of course, what the Europeans themselves collect. Part of it is the fact that, we in the United States have an advantage that at some point if you want to get to the Middle East, you are going to have to cross an ocean. And unless you swim, you are going to need to get on an airplane.

Senator AYOTTE. Right.

Mr. CHERTOFF. So that is going to be data somewhere. Not true in Europe, and there are—not only Turkey but, for example, Greece I think does not have a particularly robust system.

Senator AYOTTE. Right.

Mr. CHERTOFF. So I would say there are a number of measures that need to take place. One is the Europeans need to raise their game a little bit, and we need to have not only more exchange of information about the kind of travel you are describing, but we need to help them collect better. Now, that is only going to deal

with part of the problem. The other parts of the problem will deal with people who transit, let us say, by getting on a boat, which you can do in a place like Greece and Turkey and going someplace else. But that is where financial data, communications data, things like that give you additional granularity.

Now, that plunges us into this big controversy about the collection of meta data, and I must tell you that the ability to collect meta data is a huge advantage, and efforts made to prevent us from doing that in Europe is really a problem.

Senator AYOTTE. And that is in the wake of the Edward Snowden revelations.

Mr. CHERTOFF. Correct. And part of the problem is people ask the wrong question. They say, well, does the collection of this data lead immediately to the disruption of a plot? That is not what the data does. What it does allow you to do is exactly what you are talking about: look at communication, finance, and travel arrangements that are held in databases and see whether these indicate that somebody has an unexplained absence, a disruption of behavior, or some indication that money or communications are emanating from a place like Yemen. It does not mean that the person does not have an innocent explanation, but that is exactly what you need when you are looking for a needle in a haystack.

And I guess my bottom line is if you are looking for needles in haystacks, you have to make sure you have the whole haystack. And that is an area where I think we and the Europeans need to make sure we are not handicapping ourselves because of the Snowden stuff.

Senator AYOTTE. Other thoughts?

Mr. JENKINS. A couple of things. Some of the problems that were illustrated in the Charlie Hebdo attack, first of all, the French authorities in particular—and there is a handful of countries in Europe that are just sending tremendous numbers of foreign fighters.

Senator AYOTTE. Right. France happens to be one of them.

Mr. JENKINS. Right. And they are really being overwhelmed to a degree by volume. Indeed, there was a public statement most recently by the Prime Minister of France that said he would not be surprised to see the number of fighters from Europe going to the so-called Islamic State increase to 10,000 by the end of the year. So these are just huge numbers, and it is difficult to keep them under surveillance and keep track, effectively monitor all of them.

The second problem that they have that was apparent in the Charlie Hebdo attack is persistence. I mean, the Kouachi brothers had been on the French radar for more than 10 years before this attack. They had been arrested. One of them had served time in jail. They had been under surveillance for years, and——

Senator AYOTTE. And I believe one or more of them were also on our no-fly, so that is a good thing.

Mr. JENKINS. Yes. They were on our list as well, and so the problem is, as I say, this persistence. This is a long-term issue, and because somebody does not necessarily do something for 6 months does not necessarily mean they should fall off the radar. Now, that creates some dilemmas for civil liberties, I realize, but it is an issue.

The second thing—and Secretary Chertoff referred to this—in terms of land borders, we can be of assistance to a number of our European allies, particularly those who are on the front line, Greece and Bulgaria, who have land borders with Turkey, and help them deal with this issue. We are, I understand, providing some training now to some border security issues in Bulgaria. We can also work with Turkey, because, as I say, they are on the front line. And I understand that the cooperation there is improving recently.

The third area is in terms of these roundabout, indirect travel ways. The young man who carried out the attack on the Jewish museum, killing people in Belgium, he had gone on a roundabout way of travel, and so this is not simply looking at trying to plug these gaps by looking at visa waiver countries, but being able—and this is where PNRs become helpful; this is where intelligence sharing becomes helpful—to be able to pick up people who may fly from the Middle East to Southeast Asia back to another country and then up into yet another country, not necessarily their home European country. And so we want to be able to pick that up.

And then, finally, this issue of sharing, this is always a complicated business in the area of intelligence, the sharing arrangements, but the Europeans are having some difficulty sharing information with each other on this issue. Intelligence is one of the last bastions of sovereignty, and in some cases, because of visa waiver, it is easier for them on a bilateral basis to share with us than it is to join a common 28-nation European sharing system. And so we have to be able to help out in this.

Senator AYOTTE. I am sorry. I know my—go ahead.

Dr. FREY. I am sorry, too. I just wanted to elaborate on two quick points, particularly with what Mr. Jenkins said.

No. 1, information sharing and intelligence sharing is a requirement of visa waiver countries, and that gives us potential leverage. For example, if the intelligence community or if DHS is reporting, well, we are not getting everything we think we should be getting, the VWP allows you to use that tool to say, well, you are required to do so, please give it to us.

And the second thing I would add quickly is the inspections and the audits we talked about give our government much greater visibility into which of these countries do this well, identify and track foreign fighters, and which do not, which then leads to, OK, we need to help Greece with additional training or we need to help Belgium put in a system to help track fighters. So we would lose that visibility into how these countries do this work without the insight the Visa Waiver Program gives us.

Senator AYOTTE. I know my time is well expired, but I hear two things from asking the three of you these questions.

No. 1, to Secretary Chertoff's point that perhaps we can put legislatively the intelligence-sharing requirement rather than just through the Department rulemaking, and a way we can work with the Department on that to allow them to sort of say here is the teeth of what we need to do to fulfill our responsibility.

And, second of all, I think perhaps working together better on the PNR information and sharing among countries and our own gathering of that information as we look at the challenge of people kind of traveling around in different areas.

Thank you.

Chairman JOHNSON. Thank you, Senator Ayotte. Senator Booker.

#### **OPENING STATEMENT OF SENATOR BOOKER**

Senator BOOKER. Thank you, Mr. Chairman. And thank you, Senator Ayotte, for initiating this very important discussion. It is great to see the panelists, and I appreciate your testimony so far.

I just want to hone in on one issue around illegal immigration and the problem we have in this country. So much of the focus is border crossings on our Southern Border, but the reality is about 40 percent of the illegal immigration population is due to visa overstays.

So, again, being a little bit new here, I know there have been lots of congressional committees that have requested individual overstay rates for VWP countries. However, the Department of Homeland Security has not provided this data, citing a lack of confidence in the collection figures.

Mr. Chertoff, I understand you are leaving, and you would not need a visa to come back to Jersey, either. But could you maybe shed some light on this for me? You are no longer with the agency, obviously, but can you speak to why it is so hard to collect this, what I consider very critical data?

Mr. CHERTOFF. This issue has been discussed for years now, and it has to do with the exit process. How do we record when people exit the country?

Right now we have the biographic process for exit as opposed to a biometric process for entrance. So if you come in from a foreign country by air or by sea, you have to give your fingerprints. If you come in by land and you are not a Canadian or a Mexican, you have to give your fingerprints. But there is no exit requirement. There is no requirement to give your fingerprints when you leave.

In the air domain, if memory serves me, we get it biographically, because the manifest will tell you who leaves. But there is always the potential that there will be a mix-up with respect to the name or it will not correlate with the entrance.

If you leave by the land border, we do not really record your exit, and we have not built an exit facility. We have talked over the years about cooperating with the Canadians and the Mexicans so that they could exchange who is crossing the land border there, and we could get a better picture.

In terms of putting US-VISIT biometrics in departure, the obstacle has typically been money, and the fact that the airlines have often resisted it on the ground they think it is going to be cumbersome.

I will tell you, traveling around the world quite a bit, almost every other country I am in does have some exit process where you have to leave. So, again, if we had the willpower and the money, we could get a better sample of who leaves.

The one thing I will, however, underscore is this: For understandable reasons, the emphasis has mainly been in preventing dangerous people from getting in. Once they are in and they have 90 days, let us say, legitimately to be here, they can do a lot of damage in 90 days. So it is perhaps to be expected that, to the extent that there has been an investment of resources, it has been



largely on the preventing bad people from coming inside and not so much worrying about the overstays who are not causing harm but maybe violating the terms of their admission.

Senator BOOKER. And “not causing harm” is, I guess, a relative term. Obviously, we are concerned about terrorism. But there are folks who come here legally and stay here for years and years and intend not to leave. One could say that is a violation of the law, obviously.

Mr. CHERTOFF. Yes.

Senator BOOKER. And it is problematic. And so I am wondering—and maybe, Mr. Chairman, you can comment, and also Dr. Frey and Mr. Jenkins as well—is there a legislative role for us with the Visa Waiver Program? Could Congress add a requirement for low visa overstay rates to be a part of the program and drill down more deeply in what we as Congress require to be a part of the program?

Mr. CHERTOFF. I may be mistaken about this, but my recollection is that actually there was legislation at the time we expanded the program that requires visa exit, US-VISIT exit to be implemented, and the obstacle has been that money has not been appropriated for it. So if Congress wanted to actually authorize it and appropriate the money for it, I think that you could get it over a period of years.

Senator BOOKER. Dr. Frey, do you have any thoughts on that?

Dr. FREY. Yes, Senator. I think the Secretary is right. There are a number of requirements in current law both for DHS to publish overstay rates and for the Department to implement an exit system, both biographic and, then particularly with respect to the VWP, biometric. I am not sure what another requirement would do because the problem is one of resources primarily than it is meeting a particular congressional mandate.

I do think it has been a difficult problem. There have been steps working with Canada, for example, to record entries into Canada, obviously as exits from the United States, and that has been kicked off in the last couple of years to help us improve our data.

For Visa Waiver Program travelers, obviously 99 percent probably plus are by air. People do not come here via the land border for visa waiver. That gives us a better sense of who is coming and who is leaving, but the airline manifests, some have problems. Some airlines do a better job than others is getting us complete manifests or manifests without errors. But I think that is slowly improving as well.

Senator BOOKER. Mr. Chairman, I will let Senator Ernst go, but I just have to say it seems with great alacrity we seem to appropriate a lot of money for the Southern Border. But when we have 40 percent of our illegal immigration coming through air travel, especially through air travel, through places like LaGuardia and this great airport in New Jersey called Newark, that we should be focusing some of our resources where the actual problem is. And I just would like to note for the record I hope it is something that this Committee can focus on to deal with that problem.

Chairman JOHNSON. Well, I do not want to leave this moment pass here. Does anybody know what the estimated cost of that exit system would be? Have we had Congressional Budget Office (CBO) estimates of that or Department estimates?

Mr. CHERTOFF. I am sure someone knows; I do not. What you would need to do is—and it depends on how you want to implement it. The good news is nowadays biometric recording devices are less expensive and more capable. We have those, for example, with global entry when you come in. So the question is you would have to construct a system architecturally at the airport that basically led people, maybe when they were boarding, to give their fingerprints so there would be a record of that for international flights.

Then you get into issues about who actually makes sure that gets done. Is it the airline employees? They do not want to do that. So it is probably a little more complicated than I can give you here, but I would suspect the cost is actually going down, of the infrastructure, because there is simply—biometrics are now becoming more ubiquitous, and it may be pretty soon you will be able to do it on your phone. So it is worth looking at.

Chairman JOHNSON. Thank you. And we will start getting that information. It could be possibly part of our hearings on border security and immigration as well.

Senator BOOKER. Thank you.

Chairman JOHNSON. Senator Ernst.

#### OPENING STATEMENT OF SENATOR ERNST

Senator ERNST. Thank you, Mr. Chairman, for holding this important meeting today. I think this is a great discussion to have, very timely. I want to thank the panelists for being here today as well.

I just left our Armed Services Committee hearing, and actually the topics really do dovetail quite nicely today because we were speaking with the NORTHCOM and SOUTHCOM commander. And as Senator Booker mentioned, we are talking about the Visa Waiver Program. A lot of the infractions are not necessarily caused by those that are traveling by land. But we have so many issues right now with illegal immigration, with human trafficking, with drugs coming in from really an open or porous border. So the discussion there was there are great concerns with this. Well, maybe not so much by air, some of these same types of issue, but we do have people that are overstaying.

There is a great concern, though—I want to follow-up with what Senator Ayotte was visiting with you about—in the security measures that are put in place by those members in Europe. There was a Washington Post article in January that talked to some of the failures in Europe, and, I will cite one example. There is no European No Fly List. We have a No Fly List here. They do not have that. And in Belgium, their law enforcement, all they do is use an honor code. All you have to do is say, “Oh, I am not in any trouble,” and it is OK. They do not really follow-up on anything.

So I have real concerns that we have perhaps terrorists that are coming in from these European nations that have very little security or very little method of tracking. Could you maybe just speak a little more to that on some of these European—like the honor code that Belgium has or the No Fly List that is non-existent in Europe? Could you please give your perspective on that?

Mr. CHERTOFF. Well, the good news is we do not have an honor code. I mean, we get the data, and you give fingerprints, and we

do vet everybody who comes in. But I will agree that I think in Europe there is an uneven level of security. Some of it is a resource constraint issue. Some of it has to do with laws in terms of data protection and data privacy that differ among the European countries.

One of the challenges they have under the Schengen Agreement is once you are in Europe, you can move freely without a border. That is understandably a great benefit economically, but what it means is your ability to protect the population within Europe is essentially subject to the lowest common denominator of who guards the particular border.

Now, I do know from talking to colleagues and friends in Europe that they are focused on this, and they are trying to raise their game, so to speak, in terms of both their perimeter security and their ability to monitor what goes on inside. But they are contending with a very strong impulse, maybe understandable from a historical basis, against collecting and maintaining and retaining data about their citizens. And I can tell you, again, when you are looking for the unknown terrorist, whose name you do not have, the ability to correlate what I consider to be relatively trivial data—it is not deeply personal. But the ability to correlate that really does give you insight into what are the anomalies that require a closer look.

I do think, however, that we have built the visa waiver system and the protections that we talked about earlier with the understanding that there are going to be unevennesses in terms of what the Europeans do internally and that, therefore, we are not going to take it on faith. We are going to make sure that everybody who comes in who is a citizen of a visa waiver country is going to be scrutinized through the processes we have talked about.

Senator ERNST. Dr. Frey?

Dr. FREY. Thank you, Senator. I think I would, as I guess I have a habit of doing during this hearing, generally agree with what the Secretary said. Some of the practices in Europe are uneven. Certain countries do a better job of these things than others. Some of that is cultural; some of it is political and otherwise. And I am searching my memory in part—I do not recall reading the article about the Belgian honor code, but having participated now several years back in a review of Belgium for the Visa Waiver Program, I do not recall that coming up or hearing about that. But that has been several years now.

But what I would say is that if something like it is the case, if we find that a particular country's standards are not up to our standards, are not up to what they need to be for Visa Waiver Program participation, the program gives us the ability and the leverage to work with those countries to help fix the problem, whether that is giving them our expertise, whether that is giving them some training, whether that is showing them how we do business successfully so that they can try and replicate it. And I think that is one of the real values of the program, because without that and in places the program does not exist, we are blind to those failures. So, in my view, it is better to at least know about them and then have the opportunity to either fix them or know that, you know what, for Belgian travelers, maybe we ought to institute additional

restrictions—again, hypothetically, if that happens to be the case for Belgium.

Senator ERNST. Yes, thank you.

Mr. JENKINS. Just a few things. First of all, as I mentioned before, there are difficulties in Europe in getting agreement among all of the nations of the EU, and so we see a number of initiatives that either will affect only those countries that are in Schengen or in some cases smaller groups of nations, some of the recent initiatives are being pursued by the Group of Nine as opposed to the 28 European nations, because there are just historically and continuing, there are strong civil liberties-based resistance to these things that deal with records and data and papers and things of this sort.

There is change going on, and this change is very recent, and it is being propelled by the events currently in Syria and Iraq. If we look at the time frame here, this exodus of people going from Europe to Syria and Iraq really took off in 2012, 2013. Some went earlier than that, but at the beginning stages, it was as more innocent thing; that is, people going to Syria in response to the brutal repression of the Assad regime.

As that has changed, it has a more malevolent component to it, and so the Europeans now are just catching up with this and putting into place a number of changes that we see taking place in terms of all of them have new legislation in place or administrative procedures to try to deal with this, because they are far more threatened than we are. I mean, our numbers are tiny; their numbers are big.

But, finally, to underscore the point made by Secretary Chertoff, it is that we, the United States, do not depend on the levels of cooperation among the European nations. Our basis is their cooperation with us on the Visa Waiver Program and other things on a bilateral basis, on intelligence exchanges, and so on.

So whether or not Germany and Belgium and France and another country can all get together on one thing is less important to us—it would be nice if they could, but—and I am not even sure I want to say that, because, as the Secretary points out, these things, when you get 28 nations that have to agree, tend to go down to the lowest denominator, and I do not think that is necessarily the acceptable level of performance that we would accept. So we have our own set of demands which we can enforce and achieve unilaterally.

Senator ERNST. Certainly. Thank you so much, gentlemen. I appreciate your perspective. And thank you, Mr. Chairman. I do believe this is an important program. I want to emphasize that. This is an important program. But it is critical that we are protecting our folks here on our own homeland. So thank you very much.

Chairman JOHNSON. Thank you, Senator Ernst.

And as Mr. Jenkins was talking about, we do have the mechanism for enforcement. We maybe ought to take a look at should we strengthen those enforcements. But we have suspended the Visa Waiver Program three times. With Argentina and Uruguay, those suspensions are still in effect. We did suspend the program for Belgium from 2003 to 2005. So I think that is part of the purpose of this hearing, should there be greater enforcement? Should we do

some things legislatively to strengthen the hand of DHS to negotiate with those countries? That is very thoughtful testimony.

Just before I let the Secretary go to his plane, I do want to give you all the opportunity—if I were in the witness chair, there would be things I would just be thinking about, “I have to say this,” you do not necessarily get the opportunity with the questions, so I will just give you all the opportunity to, if there is one final comment you would like to make prior to being dismissed.

Mr. CHERTOFF. Well, thank you, Mr. Chairman. I appreciate the hearing. I think it is terrific that the Committee is focused on this. I think the one thing I would reiterate is on the positive side. We have spent most of the time, understandably, talking about making sure the security element is properly embedded in the program. But what is striking to me when we are strategic about our national security is the national security benefit we get from the relationships that we form here, and I am frankly dismayed by the level of anti-Americanism that you now find in certain parts of Europe, and that is not accidental, because I think it has been reported in the papers and my own experience is that the Russians really are quite systematic in using all of their levers to try to drive a wedge between us and certainly the Central and Eastern Europeans. They use their economic levers. They use Russia Today television. And our inviting countries into the program has been a major positive element in a couple of ways. First, it has sent a message that we view them as natural friends and allies and as part of the “West.” It has also increased travel and trade, and that has bound them closer to us.

So this is not just a question of making it easy for Europeans or giving them a gift. This is really about advancing geopolitically what our interest is in terms of dealing with what is unfortunately an increasing threat of aggressiveness coming from Putin’s Russia.

Chairman JOHNSON. Dr. Frey.

Dr. FREY. Thank you, Mr. Chairman. I think I would reiterate two things.

First, what I said at the beginning, which is that I think in the visa waiver context, education is critical. It is important to understand what this program does and how it works, and, in particular, as I think you will hear from the next panel, how it fits into what DHS in particular does as part of this layered approach we have talked about. It cannot be viewed in isolation. It needs to be put in context and understand the security elements it brings and how those elements interact with other countries. And so I think hearings like this are excellent for that purpose.

And the second thing I would add, actually following up on something the Secretary just said, there are very positive security benefits not only for the countries in the program, but holding the program out as an incentive for countries who want to be in the program. They begin to take steps well in advance of the program to elevate their security standards, to increase the security of their passports, to increase their information sharing with the United States, all with the hope of, as the Secretary said, becoming a member of the club and joining us. So I think that aspect is often missed as well, and it is valuable to keep in mind that it has prov-

en to be a powerful incentive, both for our foreign policy and for elevating security standards.

Chairman JOHNSON. Thank you. Mr. Jenkins.

Mr. JENKINS. In today's conflict, there is no distinction made between the homefront and the front line anymore. So these measures that normally are not considered as part of a national security strategy in fact do become part of our national security strategy. And while clearly the Visa Waiver Program has been the focus of this specific hearing, nonetheless that has to be viewed within the context of a broader national strategy, both to deal with foreign fighters, but also to achieve other national security goals. And as I say, sometimes because of the nature of our government, we tend to look at these in isolation and to lose that national security sense of it. And that is where the Senate can be extremely helpful in ensuring that the agencies of government look at it in that fashion.

The second point is that this conflict is going to go on. It has gone on for years, and it will continue in some form, morphing into different variations for the foreseeable future. We are going to be dealing with the effluent of the conflicts in Syria and Iraq for the foreseeable future. So this is really a long-term challenge, not something we are simply going to fix this year and get past it.

Chairman JOHNSON. OK. Well, thank you all for your thoughtful testimony. Just for the record, I want you thinking about the requirements to qualify for the Visa Waiver Program, are there any of those that are too high, in light of your comments, Secretary Chertoff? But, again, thank you for your thoughtful testimony, and could the next panel—

Senator CARPER. Could I—

Chairman JOHNSON. Senator Carper.

Senator CARPER. Before you all leave, just one last quick one, if you could. I am going to give you a question for the record. We spend so much time, money, and energy focusing on symptoms of problems. We do not do a very good job drilling down on the underlying causes, the root causes of problems. And one of the good examples is the migration of folks from Honduras, Guatemala, and El Salvador to our border.

I am going to give you a question for the record and ask you just to think for us out loud about some root causes here in this regard. That would be very helpful.

The other thing, I want just a clarification, if I could, before you all leave. My understanding is that on the consular interviews that take place in other countries, they actually collect fingerprints. I think you have all said that they collect fingerprints as part of the visa project. The ESTA process, as I understand it, does not collect fingerprints. Could somebody clarify that for me?

Mr. CHERTOFF. Well, you get your fingerprints collected when you arrive in the United States.

Senator CARPER. Right.

Mr. CHERTOFF. Or if you have a preclearance, you get them collected for preclearance. So they are run against a database through the US-VISIT program at the latest when you appear at the port of entry.

Senator CARPER. All right. Good.

Do you guys agree with that? Do you approve that message?

Dr. FREY. I do. Yes, I think it is a question of timing. For Visa Waiver Program travelers, the biometrics, the fingerprints and photograph are taken upon entry. They are not taken as part of ESTA, and, frankly, it is hard to imagine, at least in the current technological environment and logistical environment, how it could be taken as part of ESTA, at least without really completely changing the way the program operates.

Senator CARPER. Good. Thanks so much. Good to see you all.

Chairman JOHNSON. Again, thank you all, and we will welcome the next panel.

[Pause.]

Again, welcome to everybody. Thank you for taking the time and for your testimony. We will start with Mr. Mark Koumans, who serves as the Deputy Assistant Secretary for International Affairs at the Department of Homeland Security. Mr. Koumans.

**TESTIMONY OF MARK KOUMANS,<sup>1</sup> DEPUTY ASSISTANT SECRETARY FOR INTERNATIONAL AFFAIRS, OFFICE OF POLICY, U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. KOUMANS. Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee, thank you for your steadfast commitment to and support of my Department as it carries out its duties to protect the American people.

Thank you as well for the opportunity to testify on the Visa Waiver Program, an important vehicle for enhanced security cooperation as the United States faces new threats. I have submitted a longer written statement for the record.

Nearly 20 million travelers visit the United States each year without visas thanks to the three pillars of the Visa Waiver Program. Those three pillars are data, partnership, and layers of security—data about travelers and data from foreign governments, partnership with United States and foreign law enforcement and security agencies, and multiple layers of border control.

Concerning the first pillar, data, under the appropriately named Secure Travel and Counterterrorism Partnership Act of 2007, DHS requires several different kinds of data from travelers and their governments. Via the Electronic System for Travel Authorization, travelers provide information about themselves and their travel plans. Customs and Border Protection conducts interagency vetting to verify the eligibility of these travelers and their documents. Tens of millions of ESTAs have been approved within seconds since 2008. Also during these years, tens of thousands of ESTAs have been denied for security and document reasons.

Last November, we strengthened ESTA by adding a number of data fields, an effort that has identified travelers of concern. Furthermore, we require VWP countries to share terrorist information. Thousands of potential terrorist identities previously unknown to the United States have been made available to us thanks to the information sharing under these agreements. We also have criminal information-sharing agreements that also strengthen our ability to unmask unlawful travel.

<sup>1</sup> The joint prepared statement of Mr. Koumans appears in the Appendix on page 239.

Another form of data sharing is that VWP countries must report lost and stolen passports so that DHS can prevent the use of those passports for travel to the United States.

Now let me turn to the second pillar, partnership. The agreements and the vetting I have already described are only possible thanks to DHS partnerships with VWP countries and also with the Departments of State and Justice, including the Federal Bureau of Investigations (FBI), as well as the intelligence community. Let me describe other ways that exhibit our partnership.

DHS leads intensive interagency reviews at least once every 2 years of VWP countries, focusing on five core areas: counterterrorism, law enforcement, border security, immigration, and travel document security. In between those reviews, DHS monitors all VWP countries to ensure compliance with program requirements and to collaborate to address challenges. We could not do this without our international partnerships. We seek to enhance our security as well as the security of our partners.

European VWP countries, as well as others, share our concern about the threat posed by foreign fighters. These nations have taken steps to strengthen their abilities to detect and prevent the travel of these fighters, steps such as those called for under U.N. Security Council Resolution 2178. Countries are adopting border security measures that DHS already uses. Secretary Johnson has urged them to do so. We want them to continue, and we want to strengthen those moves.

Last, let me turn to the third pillar, our layers of security, because whether travelers have an ESTA or a visa, by the time travelers arrive at U.S. airports, DHS will have had three opportunities to review their information:

First, when a traveler applies for a visa or an ESTA, the United States conducts multiagency vetting.

Second, when a traveler makes a flight reservation, DHS obtains the data from the airline and conducts additional vetting.

Third, when a traveler checks in for a flight, now DHS obtains that passport swipe information and has the ability to deny boarding, and checks the names again.

In addition, CBP has personnel stationed at key airports around the globe, and TSA deploys air marshals for additional layers of security.

So those three pillars—data, partnerships, and layers of security—underpin the Visa Waiver Program.

In closing, let me emphasize that, as Secretary Johnson has said, DHS continues to review the safeguards of the VWP. We are prepared as threats change to consider additional administrative and legislative steps to achieve our goal of even stronger security for the United States. We will continue to partner with Congress to explore ways to enhance the program security requirements while promoting travel to the United States.

Chairman Johnson, Ranking Member Carper, other distinguished Members of the Committee, thank you for the opportunity to appear before you today. It will be my pleasure to answer your questions.

Chairman JOHNSON. Thank you for your very well organized presentation.



Our next witness is Maureen Dugan. Ms. Dugan is currently the Deputy Executive Director of the National Targeting Center at U.S. Customs and Border Protection. Ms. Dugan.

**TESTIMONY OF MAUREEN DUGAN,<sup>1</sup> DEPUTY EXECUTIVE DIRECTOR, NATIONAL TARGETING CENTER, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY**

Ms. DUGAN. Thank you. Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee, thank you for the opportunity to discuss the role of U.S. Customs and Border Protection in securing international travel and the Visa Waiver Program.

CBP continually adjusts and aligns our resources to address the evolving nature of terrorist threats to the homeland. Our ability to rapidly leverage information and respond to emerging threats is key to our intelligence-driven counterterrorism strategy and one of CBP's greatest strengths.

In response to a broad spectrum of threats, CBP has extended our border security measures outward to address risk at the earliest possible points. Every day CBP inspects more than a million international travelers at our Nation's ports of entry, approximately 300,000 of these arriving at airports.

We have developed and strategically deployed our resources to detect, assess, and mitigate the risk at every stage along the international travel sequence, including when an individual applies for U.S. travel documents, reserves or purchases an airline ticket, checks in at an airport, is arriving en route, and applies for admission at a U.S. port of entry.

In general, before foreign nationals travel to the United States, they are first required to apply for a non-immigrant visa with Department of State or, for eligible Visa Waiver Program travelers, a travel authorization from CBP through the Electronic System for Travel Authorization. Before issuance, visa and ESTA applications are vetted against the terrorist watchlist and law enforcement holdings and assessed for risk and eligibility. After issuance, they are continually vetted against new derogatory information that may arise subsequently.

Before a U.S.-bound flight departs, CBP's National Targeting Center obtains and analyzes traveler data to assess the risk of all passengers, regardless of citizenship or visa status, and applies intelligence-driven targeting rules. If derogatory information or other data indicating a risk is discovered, CBP is able to take a number of actions overseas to mitigate the issue prior to travel or to prevent travel altogether.

For example, the CBP Immigration Advisory Program deploys CBP officers in plainclothes at 11 strategic foreign airports in 9 countries to work with air carriers and foreign authorities to identify and address potential threats. These officers can question travelers, recommend additional security screening, coordinate with air carriers to prevent passengers who may pose a security threat,

<sup>1</sup> The joint prepared statement of Ms. Dugan appears in the Appendix on page 239.

have fraudulent documents, or would otherwise be inadmissible upon arrival from boarding flights to the United States.

At all points in the travel continuum, even while a flight is en route to the United States, CBP continues vetting passengers and traveler information, including visas and ESTA authorizations, to ensure that any change in a traveler's eligibility are identified in real time and appropriate actions taken, such as recommending visa revocation, revoking travel authorization, preventing travel, coordinating with other agencies for further investigation or enforcement action, or requiring secondary inspection upon arrival.

Upon arrival in the United States, all persons are subject to inspection. To determine a traveler's identity, intent, and admissibility, CBP officers review entry documents, conduct personal interviews, and run appropriate biometric and biographic queries against law enforcement databases.

CBP also conducts outbound operations, leveraging all available advance travel information and using targeting rules specific to the outbound environment to identify and, when appropriate, interview and/or apprehend travelers for law enforcement or security-related reasons.

CBP, in conjunction with our investigatory partners, has long-standing protocols for identifying, examining, and reporting on encounters with persons on the terrorist watchlist or of law enforcement concern. As the foreign fighter threat grows, CBP works in close partnership with the Federal counterterrorism and intelligence communities, State and local law enforcement, the private sector, and our foreign counterparts to develop greater situational awareness of emerging threats, leverage each other's capabilities to disrupt threat networks, and coordinate enforcement actions.

CBP has implemented a rigorous targeting program, placed officers in strategic airports overseas, and build strong liaisons with carriers to improve our ability to address threats as early as possible and effectively expand our security efforts beyond the physical borders of the United States.

Thank you for the opportunity to join my colleagues to testify on this important subject, and I am happy to answer any questions you may have.

Chairman JOHNSON. Thank you, Ms. Dugan.

Our next witness is Edward Ramotowski. Mr. Ramotowski is the Deputy Assistant Secretary for Visa Services in the Bureau of Consular Affairs of the Department of State.

That is a pretty big title, but thank you, Mr. Ramotowski. You have the floor.

**TESTIMONY OF EDWARD J. RAMOTOWSKI,<sup>1</sup> DEPUTY ASSISTANT SECRETARY FOR VISA SERVICES, U.S. DEPARTMENT OF STATE**

Mr. RAMOTOWSKI. Thank you, Mr. Chairman, Ranking Member Carper, and distinguished Members of the Committee. Thank you for calling this hearing today and for your strong commitment to the Department of State's twofold mission to keep America safe while welcoming legitimate visitors who grow the U.S. economy and create jobs. The Visa Waiver Program is a vital part of our strategy to safely and effectively achieve both of those objectives, and I appreciate the opportunity to elaborate how this is done.

DHS is the lead agency for determining a country's eligibility to join the Visa Waiver Program. Our role in that process is to nominate a country for participation once all the statutory requirements for the program are met.

After admission into the program, a country's continued participation is subject to the biennial DHS-led review of country conditions, including the security of its travel documents, border controls, immigration and nationality laws, and other national security concerns. Our diplomatic missions abroad work very hard to assist our DHS colleagues with these reviews and with any necessary follow-up actions.

The Department's visa screening policy is founded on a risk-based approach focused on greater and more effective information sharing. This approach enables the United States to channel more resources toward the prevention of high-risk travel while simultaneously increasing the number of legitimate visitors who come to our country.

As my colleagues have testified, all intending VWP travelers must first receive DHS approval through the ESTA system. If an ESTA authorization is denied, that individual is barred from boarding a U.S.-bound air carrier without first applying for and obtaining a U.S. visa. Any foreign national denied an ESTA clearance is referred to the appropriate U.S. embassy or consulate for additional review, which would include a visa interview as well as biometric screening. So DHS always has an alternative whenever a potential visa waiver traveler raises any possible concerns.

The cooperation between State and our interagency partners is a dynamic process which is constantly refined to adjust to today's realities and real-time security information. Most recently we collaborated on an enhanced list of questions for VWP travelers through the ESTA program. These questions help to identify possible threats attempting to travel through the program without introducing an onerous administrative burden or raising privacy concerns.

We also work very closely with DHS and other agencies on the continuous vetting of foreign travelers, including visa holders and VWP participants, to ensure that we can revoke a travel benefit if derogatory information surfaces after the adjudication of the case.

The Department of State embraces a layered approach to border security screening. The data we obtain through information-sharing agreements required by the Visa Waiver Program comprises a

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<sup>1</sup> The prepared statement of Mr. Ramotowski appears in the Appendix on page 246.

key element of that approach. To date, the Department has negotiated over 40 arrangements with foreign partners to exchange terrorist screening information. With our interagency counterparts, the Department of State has engaged numerous VWP countries to better identify and counter terrorist foreign fighter threats between Europe and Syria.

Our efforts also go beyond visa and travel screening. The Department has also focused on an initiatives and programs to counter violent extremism abroad and prevent the radicalization and recruitment of individuals by terrorist organizations. In particular, State works with DHS to both design capacity-building activities and to share the benefits of DHS' domestic experience with our international partners.

The Department recognizes that the United States' long-term interests in security are served by protecting our country from those who seek to do us harm while continuing the flow of commerce and ideas that are the foundations of our prosperity and security. The Visa Waiver Program is a key component of that effort. We have built strong relationships throughout the U.S. Government and with our international partners to ensure the real-time flow of information necessary for keeping our borders secure.

Thank you again, Mr. Chairman, and I am happy to answer any questions.

Chairman JOHNSON. Thank you, Mr. Ramotowski. I think I will start with you. The question I was asking the last panel based on Secretary Chertoff's comment about how important this Visa Waiver Program really is in terms of our outreach to certain Eastern European countries, in light of that, are there any requirements within the program for qualification that are either too high or too low? In other words, are the hurdles set at an appropriate level?

Mr. RAMOTOWSKI. Mr. Chairman, I think some of the countries that wish to join the program might say that the statutory requirement for a 3-percent visa refusal rate is their most difficult hurdle to cross, because that is one thing that they cannot directly affect through their own actions.

When we are interviewing applicants for U.S. visas, we make our decision on a case-by-case basis on that applicant's individual circumstances. And it is the aggregate of those decisions that determines the overall visa refusal rate. And current law requires a rate of 3 percent or less to join the program, and that is a difficult hurdle for some countries to meet.

Chairman JOHNSON. So I understand, those countries have a problem with it. Does the State Department or does this Administration think that maybe is too high a hurdle? And should that be potentially revisited?

Mr. RAMOTOWSKI. The Administration has endorsed proposals made in Congress to consider a 10-percent refusal rate, and in the past the rate has been at 10 percent for a period of time. And so the Department of State would support those efforts.

Chairman JOHNSON. Well, thank you. We did have a couple of suggestions in terms of potential legislative initiatives to help strengthen the program. One by Secretary Chertoff talked about maybe we could increase the requirements for information and intelligence sharing.

Mr. Koumans, would you agree with that? Would that help strengthen the Department's hands in trying to negotiate better compliance?

Mr. KOUMANS. Thank you, Mr. Chairman. I think that we actually have a pretty robust system in place with respect to that kind of information sharing, and I just want to emphasize, in preparation for this hearing, in collaboration with our interagency partners, information about 5,500 known and suspected terrorists has been provided to us by our Visa Waiver Program partners already. So those agreements are in place. Those agreements are working.

I think what was discussed in the first panel was also their own abilities, and we are working with them to improve some of their abilities, and I think that that is something we want to continue to focus on as part of that partnership that we have with them.

Now, they know more about their citizens than we do, and so that is something that we continue to work on to improve. I am not saying that it is perfect, but I think the agreements that we have in place in that area I think are quite strong. And as they build their systems, the PNR that was talked about in the previous panel, I think they will be in an even stronger position to share lessons learned, knowledge about the kinds of travel patterns that they are seeing, and, of course, the particular suspicious and criminal and terrorist individuals that they are encountering and preventing from traveling.

Chairman JOHNSON. Now, it is the Department of Homeland Security that is charged with doing these audits every 2 years, correct?

Mr. KOUMANS. Yes, Mr. Chairman.

Chairman JOHNSON. Again, having come from the business world, with the ISO certification, with 6-month surveillance audits, that was one of the questions I asked the last panel. Is that something that you think would be helpful? Again, not a full-blown audit but just a skinnied-down—with fewer personnel, just checking in on a more frequent basis.

Mr. KOUMANS. Thank you, Mr. Chairman. Just so that it is clear about what we do, what we do now when we say we make the biennial assessments, we already have the capability—and there is one country that I will not name that is under a provisional status, so they are getting more frequent reviews. We already have the capability to do more frequent reviews, and do that when it is warranted. And it is important to mention that these biennial reviews—because in many cases, in most countries, it is every 2 years. It is not as if we do the 2-year review and then we do not look at them. The reviews take from 6 to 9 months. It is a pretty intensive period of information collection from our interagency partners and working with the host government, working with the embassy there overseas, learning from other agencies how they are cooperating with their counterparts, then compiling the data, vetting it, checking it, then writing the reports. That is a pretty intensive period.

But then in that year, year and a half, when we are not in the active cycle, they are still subject to continuous monitoring. On a daily basis we are hearing the statistics, a daily, weekly, monthly basis from CBP, what is CBP's experience with respect to people

arriving at the port of entry? Are we starting to turn around a larger number of them? We would see an uptick there. Or from the Immigration and Customs Enforcement (ICE), are they starting to see any issues with removal of people? Because VWP countries are required to accept the return of their citizens.

From Interpol, the lost and stolen passport database, are there any problems? Are these countries still reporting as they are supposed to on a regular basis, many 20, 30 times a month?

Chairman JOHNSON. So you are saying there is really continuous monitoring already.

Mr. KOUMANS. There is continuous monitoring.

Chairman JOHNSON. OK. Well, that is comforting.

Senator Booker was talking about the exit system, and the response was we do not have the money. Have there been cost estimates on kind of a layered basis, maybe biometrics, an exit system for airline travel? Does the Department have any of those estimates prepared? Or is that something that you will have to work up?

Mr. KOUMANS. I may turn to my colleague on specific estimates, but I might just want to mention one thing to highlight because it was discussed in the previous panel. We do have currently an operation with Canada so that a land entry into Canada from the United States counts as an exit from the United States. Two and a half million records we have already gotten in this project, and we would like to do the same with Mexico. A little bit more of a challenge there, but to have that capability, Canada has been very valuable in order to help us get a better understanding of those leaving the country.

Chairman JOHNSON. OK. I was looking for a cost. Ms. Dugan.

Ms. DUGAN. Mr. Chairman, there have been costs associated. I think the issue is that the idea of what the solution would look like is really something that we are testing. So what is feasible without causing a great deal of difficulty on the departure? So we are very excited about a number of pilots that we are going to be running this year with regard to biometrics, and this spring we are going to have a pilot program in Otay Mesa with a biometric exit and the pedestrian environment. We are also running a biometric mobile pilot in Atlanta this spring and a facial recognition pilot in Dulles starting in April.

So we have a number of environments we would like to test possible solutions and where we can go that is going to be feasible and still facilitating for the traveling public. We have a test facility in Landover, Maryland, that we in partnership are working with the Science and Technology Group, and it is very exciting. As the panelists mentioned, there are so many changes with biometrics. I think that solution is viable. We are just looking for what is feasible, and it may not be the same solution across all environments.

Chairman JOHNSON. OK. Again, the other panel said the problem was a cost problem, and I realize that with technology those costs should be declining. But, again, have there been cost estimates? Is the Department aware of that? Is that something that has to be developed? I realize you are testing different systems, but are there cost estimates? Just give us some kind of ballpark of what we are talking about here in terms of appropriations?

Ms. DUGAN. Well, the reason the resource implication has been high is really with regard to the officer involvement. So when we did tests several years ago, the requirement would be to increase the number of officers that would have to be doing those outbound inspections.

Chairman JOHNSON. Again, are there cost estimates or not that we can get from the Department? Just a quick answer, just yes or no. I want to move on.

Mr. KOUMANS. Mr. Chairman, I am more than happy to take that question and—

Chairman JOHNSON. OK. Do it for the record. Thanks.

Senator Carper.

Senator CARPER. A yes or no answer. Were you all present for the testimony of the first panel?

Mr. RAMOTOWSKI. Yes.

Ms. DUGAN. Yes.

Mr. KOUMANS. All three of us, yes.

Senator CARPER. All right. Did you hear anything you agreed with? Yes or no.

Mr. KOUMANS. I heard very much that I agreed with, yes, sir.

Senator CARPER. Ms. Dugan.

Ms. DUGAN. Absolutely, sir.

Mr. RAMOTOWSKI. Yes, absolutely.

Senator CARPER. Hear anything you disagreed with?

Mr. KOUMANS. I am not sure if I would say disagree, Senator. I just tried to clarify that one point concerning Canada.

Senator CARPER. OK.

Mr. KOUMANS. There are a few things, just being a little bit more close to the program, more immersed in it, as we are on a day-to-day basis, there might be a few things that we could explore further if you would like, sir.

Senator CARPER. Ms. Dugan.

Ms. DUGAN. With regard to the use of PNR, Senator, we have a very robust system, as you know from your visits to the NTC. From our position we work closely with our foreign counterparts to try to build that capacity with their use of travel information as well as targeting. So those are areas to explore. But the gentleman from RAND Corporation, as far as U.S. Government use of travel information, I think that we have a very robust program.

Senator CARPER. Mr. Ramotowski.

Mr. RAMOTOWSKI. I think Secretary Chertoff did an excellent job characterizing both the security value of the program and its favorable diplomatic impact for U.S. interests abroad. So I fully support what the first panel said.

Senator CARPER. All right. Good.

The Ambassador from Poland was here at the beginning of the hearing. I do not know if he is still here. It is not every day that an ambassador pops in. We are always happy when that happens. I looked down the list of visa waiver countries, and Poland's name does not appear, I do not believe, and I think there are 38 nations whose names do appear.

Give us some idea why—and in a case like Poland, Poland by all accounts has been very successful at the the breakup of the Warsaw Pact, the end of the Iron Curtain and all that, and they have

been integrated very nicely into the economy of the rest of the world. Why may they not be included? And what kind of criteria is used to decide who is and who is not? Please, Mr. Ramotowski.

Mr. RAMOTOWSKI. Yes, thank you, Senator. You are quite right; Poland is one of our strongest and most closest allies. With respect to the Visa Waiver Program membership, however, they have to meet all of the statutory requirements. And the one that they have had the most difficulty with is the mandated 3 percent or less visa refusal rate. The refusal rate in Poland has been coming down. It also declined from 2013 to 2014 from over 10 percent to about 6.7 percent just now, but it does not meet the statutory requirement of 3 percent or less, and that is the obstacle.

Senator CARPER. OK. Fair enough. Thank you.

Let us talk about lost or stolen passports. A question, and this would probably be for you, Mr. Koumans. Are countries admitted into the Visa Waiver Program required to report lost or stolen passports to Interpol?

Mr. KOUMANS. Yes, they are, Senator. And actually I think that is a real success story. I can give you just a couple of details on that, if you would like.

Senator CARPER. Please. Just a couple.

Mr. KOUMANS. Just a couple. Since 2008, we have refused 35,000 ESTAs as a result of people going online and attempting to get that ESTA using a passport that was previously reported lost or stolen to Interpol. So we check that Interpol database for every person applying for an ESTA, every person making a flight reservation, every person coming to the United States. So we are a very heavy user of that Interpol database, so that has been a real success story. And not only has this been a powerful—I mean, one other way to look at it is if you ask Interpol, so 190-some-odd countries in Interpol, how many of their records—how are the rest of those countries doing, 70 percent of Interpol's records—nearly three-quarters—come from the 38 countries in the VWP. So the best reporters of lost and stolen passports are our VWP partners, providing the data to us so we can use it and prevent the entry, as I said, of 35,000 people.

Senator CARPER. Let me get just some further clarification. Those countries that are admitted into the program, are they required to regularly check Interpol's lost and stolen database against their own databases of travelers? And if it is not required, do you think it ought to be?

Mr. KOUMANS. You are asking now the second layer of question, which is, Should we require or should we encourage other countries, our VWP partners, to do the same thing that we do? In other words, we check that database for people coming into the United States. Should they do the same? I think it is something—

Senator CARPER. What do you think?

Mr. KOUMANS [continuing]. That they should strongly consider. I think the loss of Malaysia Airlines Flight 370, I believe it was, and it came to light that there were a number of passengers on board who were traveling on documents, travel documents that were known to Interpol to have been reported lost or stolen, they were allowed on that plane. They were allowed to be flying to



China, and that is not something that would have happened in the United States because we check that database.

And so I think it is something that other countries should consider more strongly, and Interpol has encouraged them to do the same as well.

Senator CARPER. Good. Thank you.

This will be, Ms. Dugan, for you and for Mr. Koumans. I believe that the State Department has a division within Diplomatic Security that investigates potential visa fraud. And since the Department of Homeland Security manages the Visa Waiver Program, is there any comparable office or entity within the Department of Homeland Security that focuses on fraud within the Visa Waiver Program?

Ms. DUGAN. We do have an ESTA Program Management Office that looks at fraud trends and fraud schemes that they see within the ESTA applications. We also at the National Targeting Center will look for smuggling schemes and through visa free travel as well as with visas and misuse of visas and other types of fraud. But the Program Management Office specifically monitors the use of those applications and red flags where there are particular issues or trends. For example, let us say a travel agency that has been linked to a particular fraud or mala fide travelers.

Senator CARPER. Do either of you have any idea how many instances of visa waiver fraud DHS may have found?

Ms. DUGAN. I can take that back, Senator.

Senator CARPER. Would you? And I will ask you to answer that question for the record, if you would, please. It is good to know that somebody is thinking about it. It would be interesting to know how many instances of fraud have been found.

All right. Thanks. We appreciate very much your being here and your service. Thank you.

Chairman JOHNSON. Senator Ayotte.

Senator AYOTTE. I want to again thank the Chairman and Ranking Member for holding this important hearing, and I thank all of you for what you do for the country.

I wanted to follow-up on a couple of different things. First of all, on the passenger name records, the issue on the passenger name records, as I understand it, we are requiring that for advance passenger information for inbound flights to the United States of America. Is that true?

Ms. DUGAN. For inbound and outbound.

Senator AYOTTE. Inbound and outbound. OK. And so how do our European counterparts deal with this? Do they? And why do we not require them also to do the same?

Mr. KOUMANS. Thank you, Senator. The picture in Europe, and wider than Europe, with our other VWP partners, is mixed. This is their own sovereign decision. A number of VWP countries in Europe have PNR systems where they collect and analyze, and there is a first step before PNR, which is, as it is called, Advance Passenger Information (API). That is the passport swipe, the manifest. So this is name, date of birth, nationality, passport number. That is sort of the basic level of information, and that is collected when people check in for a flight, and across Europe there is a requirement actually that countries collect and check API information.

The second step is PNR. So this is when you make a flight reservation, you might also be providing your e-mail address, your phone number——

Senator AYOTTE. Right, it is more detailed.

Mr. KOUMANS. More detailed, a richer source of data, and a handful of European countries have such a system. The European Commission in Brussels is funding the creation of PNR systems in 14 EU countries, which we think is a welcome step, and the European Parliament is grappling with this issue, as was discussed in the first panel. There are privacy interests at play here. But they have talked about the end of this year being their deadline for an EU-wide PNR directive that would set the stage for all 28 EU member States having a PNR system.

Ms. DUGAN. And I just wanted to add a couple comments. We frequently meet with our foreign counterparts on building that capacity. They are very much aware of the foreign fighter issue and are looking for ways to build a more robust vetting system. And so we offer technical expertise as well as expertise on the legislative requirements of whatever is dependent in their particular country to build that. In some cases, they need to pass a law in order to require the carriers to provide that information to them.

Senator AYOTTE. It strikes me as we think about this idea of, one of our challenges which I mentioned to the earlier panel on this foreign fighter issue, it is not just a matter of ingress and egress. If I am a European and then I travel and go to Syria or I go to Yemen or I find another way to get there, the more information we are able to gain gives us better information to be able to prevent that person that had gone, for example, to Yemen and trained with al-Qaeda to then be traveling at some point to our country or vice versa.

So, obviously, I think this is an issue we should be pressing our counterparts to do more on, and when it comes to information sharing, Secretary Koumans, I was very interested in your comment based on what the earlier panel had said. And did I hear you say that we have 5,500 agreements or something like that? So help me understand how it is done now. We have agreements, whether they are bilateral or multilateral, with these countries, and are all agreements the same? In other words, are we requiring the same kinds of conditions on information sharing with every country in this program? Or are there different terms with different countries?

Mr. KOUMANS. Thank you, Senator. I am happy to try to clarify that. Under the Visa Waiver Program, as was required under the Secure Travel and Counterterrorism Partnership Act of 2007, part of the 9/11 Act, the 9/11 Commission Implementation Act, they are required to provide us with information about those who could pose a threat to the United States. And that has been implemented via criminal information-sharing and terrorist information-sharing agreements. And so each of the VWP countries has been obliged to meet that obligation and to sign those agreements.

I will give one example. You have Andorra, San Marino, you have some small countries out there, and you have different legal regimes in the different countries, and so we have made——

Senator AYOTTE. So we have negotiated different terms with different countries, essentially.

Mr. KOUMANS. Very analogous. There is a template, and so there are minor tweaks for each country. But the bottom line is they are all required to provide us with terrorist information, and that is what the 5,500 comes from. That is the data that we have gotten from the implementation of those agreements.

Senator AYOTTE. It strikes me as one of our biggest vulnerabilities in the sense that the information that we have and the willingness of countries to share amongst themselves is critical, and with us is really critical as we think about the foreign fighter challenge, which goes beyond the Visa Waiver Program. Obviously, the Visa Waiver Program is a component of our system that is important, and we want to make sure that whatever improvements we can help with you to have the tools that you need, you have for this program. But ultimately it is going to come down to information sharing, and I think that is why when I heard Secretary Chertoff say in the prior panel that perhaps rather than just an agreement, making sure that in statute we are clear, I understand you are going to have to still negotiate with some countries, but we are clear about what our intent is to make sure that, you are, as you negotiate these agreements, are quite clear about what we are expecting of people. I appreciated that, and I would love to have more feedback from all of you on that recommendation that he made. I know you just heard it today, but I would like to hear, if you can follow-up with us on it, about how you think we could help with that and work together. We want to make sure you have the tools that you need.

I wanted to follow-up on Senator Carper's question about Interpol and lost and stolen passports and the database. How often or at what interval are countries required to submit to Interpol when they have lost or fraudulent passports? So, in other words, is there a requirement that as soon as I know I have a fraudulent case, I have to get it to Interpol? Is it a periodic requirement? Do we have a variation among countries? And while we are quite proud, obviously, of the success of it, any lost or, obviously an fraudulent passport that is made or lost creates a lot of vulnerability. So how often are they required to do it? And what is the consistency among countries?

Mr. KOUMANS. Thank you, Senator. I am happy to try to clarify that. The way that it is stipulated and as we explain it to countries, they are required to comply with Interpol's best practices. Interpol's best practices call for basically daily reporting.

Senator AYOTTE. So as soon as you know.

Mr. KOUMANS. As soon as you know. And so we tell them you need to have an infrastructure in place so that if you say you take Italy. All of the police stations throughout Italy domestically need to be reporting centrally, to Rome, presumably, and all of the Italian consulates and embassies throughout the world need to be reporting back to Rome—and Italy's is just an example—so that that can be reported daily to Interpol.

Now, I can tell you that if a country—and there are many, and as I mentioned, in the monitoring that we do, we follow this, and there are many that do, in fact, report daily. Weekends, national holidays, they are reporting daily, even if it is to report that they have nothing today.

Now, are we going to really ding them if they get down to 29 or 28 a month? We may give them a couple of weekends off. But anything under, when you start to get under that it is not as if we have a firm number, but, yes, we basically expect reporting on all work days but daily is what they are held to.

Senator AYOTTE. I know my time is up, but it was actually quite shocking to me that these other countries are not checking Interpol's database on their flights. It seems to me it is a real vulnerability for them. It is also less information for us to be able to stop among travel among other countries, not just our own people who are using fraudulent documents. So I hope that is something that internationally we are focusing on as well, because it seems like a vulnerability. Thank you.

Chairman JOHNSON. Senator Peters.

#### **OPENING STATEMENT OF SENATOR PETERS**

Senator PETERS. Thank you, Mr. Chairman, and thank you to our panelists for your discussion today and the previous panel as well.

I think the Visa Waiver Program is a very important program for encouraging travel to the United States and promoting economic development. In fact, in Michigan, in my home State, tourism is a \$17 billion industry, and it supports about 200,000 jobs in the State. Our award-winning Pure Michigan brand promotes the State both in the United States as well as countries all across the globe, and as an international destination and it is a leading place to do business and it has been successful bringing people from all over.

Allowing preapproved citizens of participating countries to easily travel to the United States to visit our landmarks, attend our conferences, or do business serves as an important economic engine for the country. And since September 11, Congress and the U.S. Government have implemented recommendations from the 9/11 Commission, and the evidence seems to support the notion that the Visa Waiver Program's focus on enhancing security is indeed working.

In fact, I am told that earlier this year we had a German citizen who applied for authorization to travel to the United States via the ESTA system, and during the vetting process, the individual was connected to a subject with a national security concern, and the CBP was able to deem the applicant ineligible for admission to the United States and was denied ESTA.

Five days later, that same German citizen arrived at the Detroit-Windsor Tunnel in a taxi attempting to enter into the country, and the CBP identified the individual as a match to the ESTA denial, and they denied this person entry into the United States, which was a success, obviously, of the system.

DHS denied over 50,000 applications last year out of the 13 million applicants that came in. The Visa Waiver Program allows us to provide additional security to a small number of select travelers while encouraging the vast majority of citizens from friendly countries to more easily visit our country.

And now while I recognize that there are concerns about the Visa Waiver Program—and this hearing has allowed us to discuss some

of those concerns—I would like to focus on how this program can strengthen our security as well as move us forward.

Ms. Dugan, the National Targeting Center has certainly played an important role in the program's expansion to focus on security concerns. Do you believe that the Visa Waiver Program and our national security are mutually exclusive?

Ms. DUGAN. Senator, we are constantly working for ways to improve the security of international travel while also making it facilitating for the travelers who wish to come here. We know that the vast majority of travelers are bona fide, valid travelers, and that is played out with the percentage of ESTA applications, the vast majority are approved within seconds, so not mutually exclusive. It is two sides of the same coin. We are always segmenting risk so that when we know someone is of low risk, we can expend our resources on those individuals who require additional scrutiny. Whether that means a secondary inspection, whether that means referring to the embassy for a more targeted interview because they are not immediately approved for an ESTA, we want to take that extra time with those individuals that we have specific information or through our rules we believe maybe has some derogatory information. So until that is resolved, we will not allow them to travel to the United States.

So there are a number of options we can take, but it is always a matter of segmenting those of low risk; for example, with our Trusted Traveler Programs, they go through a rigorous vetting program, and they can go through global entry at our major airports. They are segmented as low risk. Again, that allows us to employ our resources on those areas that need it most and require additional scrutiny.

Senator PETERS. Great. This next question is really to any of the panelists that want to answer, one or all of you. Basically my experience is that any system is only as good as the information that you put into it, and we have heard quite a bit of discussion about that today. Our allies want to participate in the Visa Waiver Program because of the economic benefits they receive from American travelers who can now easily visit their countries. And because of the value of this program, we are able to require stronger, better information-sharing agreements. And, Mr. Koumans, I know you talked about that just recently on that issue. But how does our security cooperation with the Visa Waiver Program countries compare to non-participants? Some kind of feedback from one or all of you.

Mr. KOUMANS. Thank you, Senator. I would say that our cooperation with VWP countries sets the standard for what we aspire to reach with other countries, and it also sets—as was also discussed in the previous panel, it is a powerful incentive, and we have seen countries that hope one day to qualify and meet the dozen criteria that they have to meet begin the information sharing and begin issuing higher-quality passports and signing the agreements with us and reporting data to Interpol, so that incentive is there to have the higher level of security cooperation with us. And so it increases border security even in countries that are not yet in the Visa Waiver Program. But, yes, visa waiver countries set the standard for cooperation.

I have to give a word to Canada. Canada is in a separate category, we have an extremely close security partnership with them as well.

Senator PETERS. And we are happy about that in Michigan.

Mr. KOUMANS. We are very much.

Mr. RAMOTOWSKI. Senator, I would just add that the Department of State and our interagency partners work with all countries to encourage good border security practices, and so we are not exclusively focused on just visa waiver countries. We encourage all countries to report lost and stolen passports, to exchange antiterrorism information, and to work with us to meet those threats.

Senator PETERS. Great. Thank you so much for your answers.

Chairman JOHNSON. Senator Lankford.

#### **OPENING STATEMENT OF SENATOR LANKFORD**

Senator LANKFORD. Thank you, Mr. Chairman.

I do want to return back to the conversation that the Chairman initiated earlier about the exit program. We are getting better and better and more and more efficient at checking people in. I want to know our progress of checking people out to know when people leave, leaving on time, status of their whereabouts while they are in the country and such. Give me a progress update. We talked a little bit about some of the budget issues. Give me a progress update. Where are we in that process?

Ms. DUGAN. Senator, we are rolling out a number of pilot programs this year to test what options might be viable for the solution to biometric exit, so we are very excited about the potential. And as I mentioned earlier, the solution may not be the same across all environments. We may be able to provide a number of different solutions. In terms of outbound operations, we have very targeted operations where we can employ an inspection where warranted. So we do vet all outbound travelers as well. We are not necessarily doing an inspection or an examination, but we are looking at all of that information going outbound as well as inbound travelers.

Senator LANKFORD. So give me an idea on time frame. We have some pilots going. Those pilots are how long?

Ms. DUGAN. The pilots are this year, and I believe fiscal year (FY) 2016 they will begin to realize what those solutions would be as well as provide to Congress the estimated cost for a full solution. But it would be phased in in terms of all environments.

Senator LANKFORD. So pilots finished by this year, Congress gets the recommendations around, let us say, a year from now, 18 months from now, whatever it may be. All that data is compiled. We get it, we look at it, we gripe about the cost, figure out how to be able to do it anyway, and then to be able to start implementing that, start rolling it out 2017, 2018, in key areas, have it done by 2020. What is the goal here?

Ms. DUGAN. Well, I think there are some statutory requirements where we are looking at airports first.

Senator LANKFORD. Right.

Ms. DUGAN. Major airports, and then a land border solution, which, of course, is much more challenging. But as far as time

frame, I can take that back as a question. I cannot say specifically, but I believe it is phased in, and at the major locations first.

Senator LANKFORD. OK. Then let us talk about this: We have a million visitors come in, let us say, over a month. We are tracking to see how many actually left, and then somehow I would assume at the end of this we are going to have a list of here are the people that had a tourist visa, they have been here 46 days now, and we do not know where they are. Is that list—and tell me how that—the hope is to be able to progress that?

Ms. DUGAN. We already have that list, so what happens now is a biographic matching of inbound and outbound and overstay list that gets prioritized for ICE and their compliance unit for response. So it is prioritized by the most critical issues, and those of national security interest or of a criminal nature. So all of that information goes through a matching process, and then it is provided on a priority basis, ranking those priorities for the ICE compliance unit to take whatever action is necessary.

Senator LANKFORD. Give me your best—

Ms. DUGAN. So that is already being done. The other part of it is the biometric exit, but—

Senator LANKFORD. So give me your best guess, a month, a year, whatever number you want to give on this, and whatever stat that you can recall of how many people we have, a month or a year, whatever it may be, that overstay that we do not necessarily know where they are, we know they came in, we do not know if they left or not, maybe they came in by a flight and left by a boat or they left by land, we just do not know. How many of those folks are out there a year?

Ms. DUGAN. I will need to take that back as a question.

Senator LANKFORD. OK. That would be great. I would be glad to be able to have that as a follow-up.

Our exchange of information right now with Central America, I know the visa waiver nations are different, obviously. El Salvador, Guatemala, and Honduras are not in that category of being visa waiver States. How is the exchange of information going with those countries in Central America where we have a lot of interplay with people, period, moving back and forth? What information are we getting from those countries? And is it sufficient?

Mr. KOUMANS. Senator, I am happy to try to answer that in general terms, but that might—because it was not fully within what we were—in terms of the Visa Waiver Program. I am happy to take that question back. I would say that it is a particular area of priority for the Department of Homeland Security, especially after what we saw last summer.

Senator LANKFORD. Sure.

Mr. KOUMANS. And we do have ICE and CBP officers posted, many of them, not all, and that is the cooperation that we are always looking to strengthen. The Secretary has traveled to that part of the world, I believe the Vice President as recently as a week or two ago. So I am happy to get you more information on that.

Senator LANKFORD. OK. Thank you. I would like just the exchange of information and data on individuals on that.

Mr. RAMOTOWSKI. Senator, if I could add—

Senator LANKFORD. Sure.

Mr. RAMOTOWSKI. Our embassies in Central America all have antifraud units in their consular sections that are regularly working with the local authorities in those countries on fraud cases, immigration scams, and crime. So we can get you more details.

Senator LANKFORD. That would be great. I have actually visited in those countries with those embassies. There are some very fine folks that are working there doing a good job, but there is obviously a lot of gaps in their information. I would like to know the status of where things are at this point.

The other one is we have had an experiment of doing customs in other countries basically, so that customs procedure happens over there in that airport. They land and then just kind of walk their way through, because that part is taken care of on that. How many countries are we doing that in? Are there other pilots that are out there? And how is that process going?

Ms. DUGAN. Yes, Senator, the preclearance process, we have 25 countries additional to the current 16 locations that have asked for a look at possibly doing it in those locations, so we are currently assessing the feasibility of those interested countries and looking to set up those operations in areas that would be the most strategic and would be most beneficial for the security of the United States as well as facilitating.

Senator LANKFORD. How do you evaluate its success on that? Obviously, doing it another place, I assume it is a different cost level, different staffing level and everything. What metric do you have to evaluate if that is a good idea or not a good idea?

Ms. DUGAN. Well, it is a bilateral negotiation, so one of the things that we would currently be looking for is whether that country would be willing to provide for the cost to set up that operation. And the other major thing is how valuable as a security location, so we would be looking at what type of demographic the travelers are. Do we have a large number of watchlisted individuals who travel through those locations? And we would have a better chance of being able to do that full examination before travel to the United States. So those are the types of things. And then technologically speaking, whether they would be able to provide all of the technology that is required to set up a port of entry, which is essentially what it would be. It is our full operation, our customs, immigration, and agricultural operation.

Senator LANKFORD. With our staff or with contractors there on that site?

Ms. DUGAN. No. It would be our staff. It would be CBP officers because they are doing the full complement of the inspection that would otherwise occur at a U.S. port of entry.

Senator LANKFORD. OK. Mr. Chairman, thank you, and thanks for your indulgence on the extra minute.

Chairman JOHNSON. Thank you, Senator Lankford. Good questions.

I will give you all the opportunity to make a brief closing comment, but I do want to follow-up real quickly on passports, because we have talked about pre-2006, we have talked about electronic and higher-quality passports. Give me the state of play in terms of what you are really talking about, how those are used? How those are scanned? And quite honestly, why aren't they being scanned as



people exit this country and being matched? So whoever is most qualified to just really talk about the state of play of passports, describe them to us, and then I will give you closing comments. Ms. Dugan or Mr. Koumans.

Ms. DUGAN. As far as the electronic passport, as the other panelists mentioned, that requirement was phased in so that it will be completely——

Chairman JOHNSON. Describe it to me, though. Tell me what it does. So you have a passport. It is a physical thing.

Ms. DUGAN. Yes, Mr. Chairman, with the electronic chip in the passport authenticates that the holder is the presenter of that document with additional information in that——

Chairman JOHNSON. So there is a photo on file? Again, those are going to be very difficult to commit fraud on, right?

Ms. DUGAN. That is correct.

Chairman JOHNSON. OK. And so what is the state of play in terms of those countries that we have a Visa Waiver Program that have electronic passports? Do all 38 have them? Were they issued after 2006?

Ms. DUGAN. The requirement was in 2006, those that were already participating countries were grandfathered in, and typically passports will be 10-year issuance, so by 2016, essentially all of the countries will have the requirement for the electronic passport.

Chairman JOHNSON. So fraudulent use of passports is going to be very difficult. You would have to actually hack into a system, unless we are not paying attention. Is that basically true?

Ms. DUGAN. Well, mala fide persons are always trying to attempt to get around whatever security requirement we put in place, so there is never a foolproof system. But, it is absolutely more secure and does combat the potential for that type of fraud.

Chairman JOHNSON. So, again, in light of those electronic passports, are we scanning those as people exit, and are we matching at least those? Or is there no system for doing that?

Ms. DUGAN. What we do is vet the manifest. We do not have officers who are actually doing——

Chairman JOHNSON. There is not a whole lot of technology required for that. You could do that at a TSA check-in point, could you not? With information systems now, we can match that very quickly, could we not?

Ms. DUGAN. One of the things is you would have to have the person actually demonstrating that they are departing, which is at the gateway, essentially.

Chairman JOHNSON. Well, when you go through a security checkpoint, that is a pretty good indication. OK. Enough of that, I guess. I will follow-up with questions for the record to get specifics on that.

Mr. Koumans, why don't you start with any kind of closing thought, briefly?

Mr. KOUMANS. Thank you, Mr. Chairman. Maybe I will just add, if I may, on the passports. As was pointed out, there are countries that were grandfathered, so if you have an Italian, French, German, et cetera, passport that was issued say in 2005, the latter half of 2005, it is still valid. It is a 10-year passport. As those are being phased out, the new higher-quality passports are being

phased in, the fraud-resistant ones. And so that is something that is a diminishing issue as time passes and more and more of those are phased out. We welcome the advent of the higher fraud-resistant passports.

A separate question of the reporting of the passport data to Interpol, then it is a question of screening against the Interpol records, and we would welcome more countries to screen against Interpol to prevent the travel of individuals using passports that have been previously reported lost or stolen.

I want to thank you for the opportunity, Mr. Chairman, to discuss this program today. I am remembering a phrase that was mentioned in the first panel, which was, "This is not your grandfather's VWP." When I first started issuing visas in 1991, in the Netherlands, which was then a new entrant in the Visa Waiver Program, it was a much simpler time. There were simple checks, and at that point you could, in fact, as a Dutch citizen go to the airport, get on a plane, and the first time we would encounter you, the first time that DHS, that CBP would encounter you, Customs Service at the time, would be when you landed at JFK or Detroit. But now, an entirely different system with the multiple layers and the information sharing that underpins it. And so our screening is enriched by the data that we get from our partnerships and makes it an entirely different system and a much more robust one.

Chairman JOHNSON. Thank you. Ms. Dugan.

Ms. DUGAN. Thank you, Mr. Chairman. We work very well with our foreign counterparts, and I think they are looking for additional ways to make their entry screening more robust. And we routinely work with them to do capacity building and ways for them to build their targeting framework and how they get to that place with whether they have to pass legislation in their country, what type of agreements they would have with the carriers and with other foreign counterparts. So I think that the willingness is there, and they are looking to us to help build that capacity.

Chairman JOHNSON. Thank you. Mr. Ramotowski.

Mr. RAMOTOWSKI. Thank you, Mr. Chairman. Perhaps the most important lesson of the 9/11 tragedy was the critical importance of information sharing, both within the U.S. Government and with our international allies. The Visa Waiver Program promotes information sharing. It is probably the single biggest contributor to international information sharing that exists. And it also has tremendous economic and diplomatic benefits as well. So I thank you very much for your support and, again, for holding this hearing.

Chairman JOHNSON. Again, I want to thank all my colleagues for attending, all the witnesses for your thoughtful testimony and your thoughtful answers to our questions.

This hearing record will remain open for 15 days, until March 27 at 5 p.m., for the submission of statements and questions for the record.

This hearing is adjourned.

[Whereupon, at 12:25 p.m., the Committee was adjourned.]

## A P P E N D I X

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### **Opening Statement of Chairman Ron Johnson “Visa Waiver Program: Implications for National Security” March 12, 2015**

*As prepared for delivery:*

Good morning and welcome.

Today's hearing will evaluate the security, economic and public diplomacy implications of the Visa Waiver Program (VWP). Specifically, we convened this hearing to examine the security screening and information-sharing mechanisms in place to ensure the VWP remains a secure travel program.

The VWP allows nationals from 38 participating countries to visit the United States visa-free for a period of 90 days or less. To prevent terrorists from exploiting the VWP, U.S. Customs and Border Protection uses the Electronic System for Travel Authorization (ESTA) to compare a passenger's biographic information against law enforcement and national security databases.

The VWP serves as an important economic tool for the United States, promoting tourism, trade and investment. According to the Congressional Research Service, in fiscal year 2012, 19.1 million visitors entered the United States under the VWP, representing 40 percent of all foreign travelers. Similarly, the VWP enhances the United States' bilateral relationships with participating countries by setting mutually beneficial security standards and providing an instrument to combat terrorist travel.

The recent terrorist attacks in Paris, Brussels and Copenhagen, as well as the more than 3,400 western foreign fighters in Syria and Iraq, remind us of the importance of constantly assessing trusted traveler programs to address potential vulnerabilities. In recent weeks, the Department of Homeland Security (DHS) Secretary Jeh Johnson stated that his department is taking steps to address any potential weaknesses in the VWP's structure. On March 2, 2015, Ranking Member Carper, Senator Ayotte and I sent a letter to Secretary Johnson asking DHS to perform an evaluation of the security safeguards in the VWP to further this effort. We look forward to his response.

We should work diligently with our foreign partners to continually refine the program to ensure full compliance with membership requirements and ensure VWP travelers are fully vetted. Doing so will ensure that the VWP will remain a viable trusted traveler program that provides many benefits to Americans while benefiting U.S. security.

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**Opening Statement of Ranking Member Thomas R. Carper**  
**“Visa Waiver Program: Implications for U.S. National Security”**  
**March 12, 2015**

*As prepared for delivery:*

Today’s hearing considers the important and timely topic of the security of the Visa Waiver Program amid evolving threats to the homeland. As we all know, the Visa Waiver Program is a valuable economic and security tool for the United States.

Congress and the Department of Homeland Security have worked hard to balance the natural tension in the Visa Waiver Program between the need to facilitate international travel and the need to keep Americans safe from the evolving terrorist threats.

When travelers from Visa Waiver countries visit our country, they spend more than \$80.5 billion every year. They stay in our hotels, they buy our goods, they visit our parks, they enjoy our beaches and they eat at our restaurants. All in all, the Visa Waiver tourists support more than 535,000 American jobs.

But the Visa Waiver Program is more than just a revenue generator. It also serves as an important national security tool for the United States. When countries participate in the Visa Waiver Program, they must implement and maintain strong travel screening measures. More importantly, these countries must share robust amounts of traveler information with the United States – information that we would likely not otherwise get. This valuable information has proven to be essential to our counter terrorism officials as they seek to prevent foreign threats from crossing our borders.

With that said, the threats that we face from terrorists have evolved during the life of the Visa Waiver Program. When the Visa Waiver Program was enhanced in 2007, the preeminent threat to the homeland was from Al-Qaeda’s central branch led by Osama bin Laden. Today, bin Laden is no more. Al-Qaeda’s core branch in Afghanistan and Pakistan has been severely weakened. But in their place, Al-Qaeda splinter groups in the Middle East and Africa have arisen and adopted new tactics that pose new threats for our country.

Today, we face the threat posed by ISIS and its determination to use social media to rally recruits and incite attacks against the West, including attacks by individuals who live in Visa Waiver countries. Moreover, conflicts in Syria and Iraq have attracted thousands of foreign fighters from all across the world who have now joined the ranks of those who wish to do us harm here at home. According to reports, more than 3,400 foreign fighters have traveled from western countries to join in these conflicts. Many of these countries have Visa Waiver privileges with the U.S.

As the number of foreign fighters grows, so do the concerns that the fighters from western countries may use the Visa Waiver Program to bypass our screening efforts at consular posts abroad, where State Department officials have the first opportunity to identify dangerous travelers. Late last year, the Department of Homeland Security took steps to enhance the requirements of the Visa Waiver Program to directly address the new threats we face. I commend the Department for proactively taking these measures.

This hearing is an opportunity to examine the Visa Waiver Program more closely and to see if there are additional steps we can and should take to improve the program and ensure that it continues to evolve and adapt as our enemies and their tactics do the same. We’ll never make the program perfect, but our goal should be to see if we can create, to paraphrase our founding fathers, a more perfect program.

This hearing is also an opportunity to remember that the Visa Waiver Program does not exist in a vacuum – there are many layers to the Department of Homeland Security's system for securing our borders. That includes robust intelligence collection and analysis, passenger prescreening, and inspections by CBP Officers at our ports of entry. Each of these layers contributes to our overall security.

But we should strive for smart improvements where we can. With each of the Department's key programs, however, we must strike the appropriate balance between security and commerce, between risk and opportunity.

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**STATEMENT FOR THE RECORD  
BY THE HONORABLE MICHAEL CHERTOFF  
CO-FOUNDER AND EXECUTIVE CHAIRMAN OF THE CHERTOFF GROUP  
AND FORMER SECRETARY OF THE  
U.S. DEPARTMENT OF HOMELAND SECURITY  
FOR THE UNITED STATES SENATE COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENT AFFAIRS  
March 12, 2015**

I want to thank Chairman Johnson, Ranking Member Carper and members of the Committee for the opportunity to participate in this valuable discussion and share my views regarding the Visa Waiver Program. My comments here today reflect my own personal views and opinions based on my experience with the Visa Waiver Program during my tenure as Secretary of Homeland Security. Today, I serve as Co-Founder and Executive Chairman of The Chertoff Group, a global security and risk management company that provides strategic advisory services on a wide range of security matters, which may include those we are discussing here today. Additionally, I am Senior of Counsel to the law firm of Covington and Burling, LLP.

Today, the United States and our allies around the world face persistent national security threats. These threats are complex, dealing with known nation states as well as adversaries not clearly defined by a flag or set of principles. We see the proliferation of terrorist groups in parts of Africa and east to Pakistan and Afghanistan. We see the rise of groups like ISIS in Syria and Iraq. This is a dangerous time in our world, perhaps more dangerous than any other time in the past ten years, when our nation worked to enhance our homeland security in order to prevent another terrorist attack from occurring on our soil, as we witnessed on September 11, 2001.

As Secretary of Homeland Security from 2005 to 2009, I worked to strengthen our homeland security by creating an effective system that would minimize and reduce the risk of another successful attack on our homeland. One important area of our focus was preventing dangerous people from crossing our borders and entering the U.S. to carry out harm. Today, with the desire and active engagement of groups like ISIS to recruit foreign fighters – meaning

westerners and Americans who can travel to their territory, train and return to the west ready to attack - the same holds true.

Just as we did after September 11, we must raise questions and ensure our travel and security programs remain robust and with that examination, we must look at the Visa Waiver Program. While some have raised questions about the security value of the program and whether it should be scaled back, I firmly believe that any withdrawal or departure from the Visa Waiver Program would be a huge mistake.

I believe the Visa Waiver Program (VWP) is essential to protecting international travel in today's growing and persistent threat environment. It provides necessary information to identify and validate a person's identity, determine if they are a risk, and whether they pose a threat to the United States. The information provided to the U.S. prior to a VWP traveler's departure along with the information sharing and law enforcement cooperation in place between the U.S. and Visa Waiver Program countries, is essential to ensuring our country remains open for legitimate international travel and trade while preventing harmful or more threatening persons from crossing our borders.

There are certainly many significant benefits to the U.S. by having the Visa Waiver Program in effect. However, we must be clear that security remains at the top. There is no random decision making in place or lack of attention when it comes to authorizing a VWP citizen to travel to the U.S.

As President Bush stated in October 2008 when he announced seven new countries as part of a VWP expansion, "these countries agree to share information about threats to our people. They also agree that their citizens use a new system that requires travelers to register online ahead of their visits to the United States. These citizens will travel to the United States only if they have tamperproof biometric passports."

Security was and remains a top priority. The new system requiring travelers to register online, known as the Electronic System of Travel Authorization or ESTA, was an important

update to the Visa Waiver Program in 2008<sup>1</sup>. This system allowed us to facilitate individual travel to the U.S. from visa waiver countries in a modern, simple and straightforward way while enhancing our security by being able to have more information and visibility for those coming to the U.S. prior to their departure. Our goal at the time was to focus on individuals. It is at the individual level that people are being recruited, trained and sent back to carry out attacks and we had to adjust our security posture appropriately.

With ESTA, we modernized the way we interact with travelers from VWP countries by asking them to submit a brief statement and biographical information online through a web portal in advance of their desired trip. This information provides basic eligibility information allowing the U.S. Government to compare the data from appropriate data bases, such as watch lists or lost and stolen passports, and respond within a matter of seconds to determine if the person was approved or not for travel to the U.S. Should a determination be made to not authorize travel, this could be tended to ahead of time and before they arrive at an international entry point to the U.S.

This information created an opportunity for the U.S. to look at the traveler's details early on and based on intelligence, we could determine if the traveler posed a risk or not before they arrived in the U.S. Our ability to analyze basic data helped determine if there was a need or concern to be flagged for further inquiry. It was an unobtrusive and convenient way to collect information in advance, and along with other programs, we could take a deeper look at the kind of connections or contacts we could find and see if there was any concern or risk to the U.S. as well those traveling within the aviation system. The VWP fundamentally enables an early warning system for risky travelers coming from overseas.

With respect to foreign fighters, we must look at U.S. citizens as well as foreigners being recruited and trained with the goal of returning to the west or to enter the US and carry out attacks. With U.S. citizens, the Visa Waiver Program is not an issue as American citizens don't need a visa to return to the U.S. It is the returning fighters from other countries traveling to the U.S. that we need to be concerned about. It is through this program, VWP, and our layered security system that we are able to judiciously and analytically collect information on travelers before they depart and identify potential connections that suggest a closer look. Do we know the

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<sup>1</sup> <http://travel.state.gov/content/visas/english/news/dhs-announces-implementation-of-the-electronic-system-for-travel.html>



VWP citizen's recent travel plans? Did it include a trip to the Middle East before returning back home? Was there is a gap in the timeline that can't be accounted for? These questions and the answers to them do not necessarily prove guilt; however, it does suggest a closer look may be warranted for a particular traveler. And that system is in place today.

Using programs like ESTA as a way of collecting information, along with other security programs including passenger name records or PNR, helps identify certain patterns of behavior which may relate to risk of terrorist activity. With September 11<sup>th</sup> always in the hearts and minds of our nation, some have gone back to look at whether our programs and analysis today, if implemented prior to 9/11, would have picked up connections among the 9/11 hijackers. As I described in my remarks to Members of the European Parliament in May of 2007, we know two of the hijackers who appeared on a U.S. watch list would have been identified when they bought their tickets. Three of the other hijackers used the same addresses as the two who we had on the watch list, so we would have been able to identify three additional hijackers. One of them was Mohammed Atta, a ringleader of the 9/11 attacks who piloted American Airlines Flight 11 which crashed into the North Tower of the World Trade Center. A sixth hijacker used the same frequent flyer number as one of the other hijackers, so we would have identified him as well. Finally, five other hijackers used the same phone number as Mohammad Atta, so those five would have been identified. With these simply analytic moves using the type of data associated with the PNR program and ESTA, we could have identified 11 of the 19 hijackers and potentially stopped them from coming into the United States. I strongly believe these programs can continue to serve us well.

During this unique time, we can and should identify ways to further strengthen security within the Visa Waiver Program, with the goal of identifying suspicious travel patterns, behaviors of concern, and those who are associated with known terrorists and their organizations. Last November, we saw DHS Secretary Jeh Johnson take these steps when DHS announced additional information relating to passport data, contact information, and additional names or aliases would be required as part of the ESTA process. Without hindering travel, this step provided additional data to better identify travelers during this heightened period of alert. Other things we can do include:

- **Expand preclearance overseas.** At this time, preclearance operations are available in 15 foreign airports in six countries<sup>2</sup>, including Ireland and the United Arab Emirates. The Department of Homeland Security (DHS) is looking at other foreign locations for preclearance operations. By establishing an Agreement between the foreign country and DHS, this Department is able to place Customs and Border Protection (CBP) officers at designated pre-clearance, overseas airports and allow them to conduct immigration and custom operations before travelers board their plane en route to the U.S. This type of program offers convenience to the passengers who now no longer have to arrive at certain U.S. gateways authorized to conduct these same operations and can go anywhere they desire. It also allows federal officials to review the ESTA and PNR information as well as have trained officers look face-to-face with travelers and determine if there is any risk, thereby enabling us to catch potential concerns before they depart and enhance our aviation security at the same time.
- **Continue to support intelligence community programs.** To get the full benefit of these homeland security programs, we must continue to support what is being done by the Intelligence Community to collect information on telephone numbers and e-mail addresses overseas. This does not require looking at content of phone calls or emails. However, being able to identify an IP address or phone number that was previously connected or used in association with terrorist activity and applying that intelligence to information on travelers attempting to enter the U.S. is extremely important and valuable. Today is not the right time to dismantle these programs that have been a cornerstone of protecting our homeland since 2001. With today's growing dangers, we need to enhance our capabilities and leverage technology and data analytics where possible to help us analyze and identify potential concerns worth investigating further.

In addition to the national security benefits, I cannot testify here today without also raising awareness to other benefits that the Visa Waiver Program provides to both the U.S. and designated VWP countries. It is more than broadening our visibility into who is coming to the U.S. but increasing our solidarity with other countries, particularly in Europe.

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<sup>2</sup> <http://www.cbp.gov/border-security/ports-entry/operations/preclearance>

There is no doubt that Europe is facing serious national security issues, with the situation in Ukraine and various threatening voices coming from Russian President Vladimir Putin toward others in the region, including the Baltics. Countries belonging to the VWP view this important program as a symbol of being associated with the West. When President George W. Bush announced the Czech Republic as part of the VWP expansion, news reports quoted then-Prime Minister Topolánek saying "It is really the biggest success we could achieve. It is a removal of the last relic of communism and the Cold War, so I am very happy."

From a strategic standpoint, it would be a significant national security concern for the U.S. if these countries began to feel isolated and that they were being cut loose from the west at the very time Russia is making noises about expanding its sphere of influence and power. One of the things that the Visa Waiver Program allows us to do with these countries is reaffirm our solidarity and belief that new democracies in Europe are every bit of part of western enterprise as familiar democracies such as England, France and Germany. Maintaining that sense of solidarity is important not just to them at this moment but is important to the U.S. as well as NATO national security alliance. Pulling the Visa Waiver Program back from these trusted allies should be considered as giving a boost to President Putin as he continues to show aggressive actions against his neighbors and the U.S.

Certainly, there are also economic benefits that occur with the ability to travel to U.S. and U.S. citizens in return to travel to VWP countries without having to obtain a visa and going through a cumbersome visa process. This program opens doors and stimulates the economies in both the U.S. as well as in VWP countries with regard to increased travel and tourism, exports, job creation and cultural exchange. It also helps free some of these countries from being dependent on other nations who may desire to dominate over a particular region or make other countries weaker and more within their control. Quite the opposite, the VWP helps build stronger and more stable economies for trade and travel as well as increased security and cooperation. Particularly at a time when the global economic climate remains fragile and economic recovery remains uneven (at least), promoting economic development has positive benefits for both the U.S. and designated VWP countries.

Constructed in a way to powerfully reduce vulnerabilities in our immigration and travel system, it is my belief that the Visa Waiver Program offers significant benefits to U.S. national and economic security and should not be pulled back in a time like this but further evaluated for ways that can strengthen our security and the benefits it may yield. Thank you again for the opportunity to contribute my personal views on such an important topic.

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**Testimony of Marc E. Frey, Ph.D.**

**Before the Committee on Homeland Security and Governmental Affairs**

**United States Senate**

**“Visa Waiver Program: Implications for U.S. National Security”**

**March 12, 2015**

Thank you Chairman Johnson, Ranking Member Carper, and distinguished members of the Committee for this opportunity to testify on the Visa Waiver Program (VWP) and its implications for U.S. national security. My name is Marc Frey. I am a senior director at Steptoe & Johnson LLP, an international law firm. Prior to joining Steptoe I served in several positions at the Department of Homeland Security (DHS), including as Director of the Visa Waiver Program from 2007-2010. In that role I oversaw the successful effort to enhance the security of and expand the VWP and managed the security assessments of member countries.

This is a timely hearing. Following the terrorist attacks in Paris earlier this year commentators have speculated on the possibility of an attack on U.S. soil by terrorists possessing passports from France or other VWP countries. Many in the media and elsewhere labor under the misapprehension that security standards are looser for VWP travelers than for those traveling with a visa, and that this poses a threat to U.S. national security. Concerns have been raised, for example, about the ability of ISIS terrorists with “Western” passports to enter the United States under the VWP by circumventing the consular interview.

Under the VWP, DHS waives the “B” nonimmigrant visa requirement for aliens traveling from the 38 approved countries, permitting stays of up to 90 days for business or tourism. A consular interview is not required. But, that does *not* mean that DHS waives security requirements for these travelers. In fact, it mandates additional, more stringent security

requirements, for both the individual traveler and his or her home country. The result is a system that provides as much security against terrorist or criminal travelers as the visa system.

Like any successful security program, VWP has been closely reviewed over the years, undergoing reform and modernization as new threats arose. It's fitting, then, to discuss potential enhancements to the program in response to today's dynamic threat landscape. At a minimum, DHS must ensure that participating countries are fully meeting their information-sharing obligations. Other options to strengthen the program include steps that DHS can take unilaterally, such as adding new data fields to ESTA, as the Department did last year, or further tightening passport requirements. They also include measures that may require or benefit from legislative action, such as making a handful of discretionary considerations mandatory, upping the frequency of eligibility reviews, or requiring participating countries to screen travelers against databases, such as INTERPOL's Foreign Fighter database or its Stolen and Lost Travel Document database.

#### **Evolution of the VWP**

Since its inception in the late 1980s, the VWP has evolved into an essential tool for increasing global security standards, advancing information sharing, strengthening international relationships, and promoting legitimate trade and travel to the United States. Over the past decade in particular, Congress and the Executive branch have worked together to implement a number of enhancements to the VWP to address evolving threats to international travel and to the United States homeland. Therefore, although critics of the VWP often continue to cite the example of the "Shoe Bomber" Richard Reid, who as a British citizen traveled under the VWP in December 2001, the reforms put in place over the past dozen years have successfully addressed this risk to date.

For example, in 2003 new requirements were put in place to tighten passport security standards for VWP travelers and to increase the frequency with which countries are formally reviewed for their designation status. Furthermore, in order to align with the recommendations of the 9/11 Commission, Congress, in 2007, mandated additional security requirements to VWP, including standards for secure travel documents, individualized pre-screening of travelers, bilateral information-sharing arrangements, prompt reporting of lost and stolen passports, and a threat assessment conducted by the Director of National Intelligence. These reforms have made the VWP a significant, security-enhancing program and a critical element of the layered border security approach the U.S. has implemented since September 11, 2001.

**Key Security Components of the VWP**

As described below, the VWP enhances U.S. security in four mutually reinforcing ways:

- It enables individualized and recurrent screening of travelers against law enforcement and security databases;
- It mandates bilateral and multilateral information and intelligence sharing;
- It requires secure passports to confirm identity; and
- It permits regular audits of the security standards of participating countries.

First, the VWP screens all travelers against multiple law enforcement and security databases, including the Terrorist Screening Database, before they depart for the United States. Using the online Electronic System for Travel Authorization (ESTA), a VWP traveler is required to provide biographic information (including name, date of birth, and passport number) as well as his or her destination address in the United States. The traveler is also required to answer questions regarding communicable diseases, arrests, convictions for certain crimes, and past history of visa revocation or deportation. In November 2014, DHS expanded the personal data

required for an ESTA application, to include national identity numbers for those who have them and data from a second passport if that passport is not from a VWP country, among other data elements. As a result, ESTA functions as a powerful screening tool, enabling recurrent, individualized vetting of travelers. Travelers without an ESTA approval cannot board a flight to the United States.

Second, the VWP mandates robust information and intelligence sharing between the United States and its VWP partners, including agreements concerning known or potential terrorists and criminals and reporting lost and stolen passport (LASP) data to the United States. Supplementing the U.S. government's "watch lists" and other databases with these three pieces of information from a traveler's home government greatly enhances DHS's ability to identify and stop travelers who pose a threat.

Third, all VWP travelers must use secure travel documents that meet internationally recognized standards, which allows for easier detection of forged or fraudulent passports. The majority of VWP travelers are required to use electronic passports (e-passports), which have an embedded chip that includes the bearer's biometric information.<sup>1</sup> At the port of entry, the biographic and biometric data contained in the electronic chip is compared to both the traveler and the travel document being presented. There are many other layers of technical security in the e-passport production process and the document itself that make duplication or forgery much less likely.

Lastly, VWP countries are required to undergo periodic eligibility reviews designed to ensure that VWP membership does not compromise U.S. security, law enforcement, and immigration enforcement interests. These comprehensive assessments are conducted by DHS, with the

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<sup>1</sup> All passports issued after October 26, 2006, presented by aliens entering under the VWP must be electronic passports.



assistance of other U.S. government agencies as appropriate. Critically, these reviews involve a site visit during which a team of U.S. government subject matter experts examines the country's security and law enforcement capabilities and procedures. Among other issues, a site visit focuses on the existence of radicalized groups in the country and the government's efforts to address this concern. The findings from the site visit form the core of the comprehensive DHS evaluation of a country's fitness to continue participating in the VWP. Should DHS identify any issues or concerns during the course of its review, it can propose and insist on mitigation measures.

To complement these reviews and to ensure recommended mitigation measures are carried out, DHS has developed a vigorous monitoring process to ensure awareness of changing conditions in VWP countries. This monitoring process includes regular consultation with U.S. law enforcement and intelligence agencies, as well as frequent communication with relevant U.S. Embassies abroad and foreign embassies in Washington for updates on law enforcement or security concerns related to the VWP. Overall, no other program provides the U.S. government with the opportunity to conduct as far-reaching and consequential audits of foreign security standards, ensuring alignment with our high standards for managing risk.

Under current law, DHS has the authority to immediately terminate a country's membership if an emergency occurs in the country that threatens the law enforcement or security interest of the United States. The Director of National Intelligence is also able to recommend immediate suspension to DHS if any current and credible threat poses an imminent danger to the United States or its citizens and originates from a country participating in the VWP.

That the modernized VWP enhances U.S. security is widely recognized by security experts across the political spectrum. The last three secretaries of homeland security, for example, have

praised the program's contribution to U.S. and international security. Indeed, for precisely that same reason, both the Bush and Obama administrations have added countries to the VWP. The VWP's security components make so much sense, in fact, that they are setting global standards for countering terrorist travel. A September 2014 UN Security Council Resolution on security measures to better track and deter terrorist travel activity reflects practices the VWP has enforced for member countries since 2008.

#### **The VWP and U.S. Border Security**

Because of its strong security components, the VWP has become an integral part of the U.S. government's ability to identify security or other risks associated with travelers at the earliest possible point and push-out our "virtual" border. In particular, the VWP helps answer the three key questions necessary to implement an effective risk-based screening system:

- "Who is a threat?" – U.S. officials need to identify known and suspected terrorists as well as other individuals who may pose a threat.
- "Is the person coming to the U.S.?" – U.S. officials need to know, as early as possible, if the traveler should be examined more closely.
- "Is the person really who he says he is?" – U.S. officials determine if the traveler is presenting fraudulent documents.

#### *Who is a threat?*

The U.S. government collects and maintains an array of information designed to identify those associated with terrorism or other illicit activities. These "watch lists" use identifiers – primarily biographic-based, but increasingly incorporating biometrics – to support border-screening protocols and procedures. However, when it comes to identifying dangerous individuals from abroad, the U.S. government is not the only, or necessarily the best, source of

information. In fact, if you wanted to identify potentially dangerous individuals from a particular country, say the UK, your first stop would not be Washington; it would be London. Many European countries have rapidly growing ethnic and religious immigrant communities, a small minority of which has the potential to become radicalized. It makes sense then that the person's home country is the best source of information about which of its citizens or residents is most likely to pose a risk to the United States. This kind of unprecedented bilateral and multilateral information sharing mandated by the VWP, along with the routine audits and inspections made possible by the program improves the U.S. government's overall ability to identify bad actors and activity.

*Is the person coming to the U.S.?*

DHS begins the screening process well before a potentially risky traveler reaches the U.S. border; in fact, DHS begins the process before the traveler even arrives at an airport through ESTA. In addition to the ESTA requirement for VWP travelers, DHS requires airlines to provide a copy of their passenger manifests and data from their reservation files. This information – which applies to all travelers and is provided to DHS a minimum of 72 hours in advance – helps the agency determine who to allow onboard a U.S.-bound plane, who requires further screening and investigation upon arrival, and who should be turned away and referred to appropriate law enforcement personnel. These advance-screening measures give DHS a better, more informed understanding of who is coming to the United States.

*Is the person really who he says he is?*

No amount of “watch listing” and passenger screening will detect terrorists if they are able to travel on an assumed identity with fraudulently obtained or fake documents. In order to verify that people are who they say they are when they travel, DHS insists on high standards for

documents acceptable for entry to the United States. These standards are highest for VWP travelers. For example, the electronic passports mandated by the VWP enable DHS to incorporate biometric verification—digital photographs and, increasingly, fingerprints—in the screening process to confirm that the person presenting the document is the person that the document describes. And, DHS routinely audits the document production and issuance process in VWP countries to ensure standards are being met. In other words, VWP makes it harder to enter the United States using fraudulent documents and forged identities.

These three elements – who’s risky, who’s coming here, and who’s who – work together both prior to take off and at the port of entry to help U.S. officials identify terrorists and criminals and prevent them from traveling here.

#### **Strengthening the VWP**

It is essential that we continually look to identify possible enhancements to the VWP in the face of current threats, much like DHS continually evaluates participating countries and recommends improvements to their security postures. As noted above, there are a number of sensible ways to strengthen the VWP, but any measure that would curtail the program even temporarily would be damaging and wrongheaded. Rather than enhance U.S. security, such a step would undermine it, resulting in the loss of significant leverage over the security standards of both current and prospective members, to say nothing of the severe economic and diplomatic consequences.

For current VWP members, suspension of the program would undermine current information and intelligence-sharing mechanisms and deprive the U.S. of visibility into their security practices, including those to prevent radicalization and identify foreign fighters. It would also

undermine relationships with our closest allies in the face of common threats ranging from ISIS to a resurgent Russia.

For prospective members, the disappearance of the program would remove a powerful and proven incentive to elevate security standards and to enhance cooperation with the United States on security matters. A number of countries, for example, have unilaterally upgraded to e-passports so as to be eligible for the VWP. Likewise, several prospective members have signed the information-sharing agreements and otherwise increased law enforcement and security-related cooperation with the United States in the hopes of meeting the program's requirements. These actions provide tangible security benefits to the United States and to the international travelling public well in advance of potential VWP designation.

While emotional responses often occur in times of heightened security concerns, any discussion of the VWP and national security must remain focused on the facts. And the facts are that the VWP has proven to be an effective leverage point for raising and maintaining security standards while providing unprecedented levels of information sharing and access, allowing the United States to better manage risk. The program not only has improved overall U.S. security, but it has also facilitated the flow of lawful travel.

Again, thank you for inviting me to testify today. I look forward to answering any questions the committee may have.

## There Will Be Battles in the Heart of Your Abode

### The Threat Posed by Foreign Fighters Returning From Syria and Iraq

Brian Michael Jenkins

RAND Office of External Affairs

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Testimony presented before the Senate Homeland Security and Governmental Affairs Committee on March 12, 2015

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**Brian Michael Jenkins<sup>1</sup>**  
**The RAND Corporation**

***There Will Be Battles in the Heart of Your Abode***  
***The Threat Posed by Foreign Fighters Returning From Syria and Iraq<sup>2</sup>***

**Before the Committee on Homeland Security and Governmental Affairs**  
**United States Senate**

**March 12, 2015**

Chairman Johnson, Ranking Member Carper, distinguished members of the committee, I would like to thank you for the opportunity to address this important subject.

My testimony will address two fundamental questions:

1. What is the threat posed by Western fighters who have joined jihadist fronts in Syria and Iraq?
2. How can the United States enhance its ability to identify and intercept returning foreign fighters with passports from European and other countries that are currently covered by the Visa Waiver Program?

Let's begin with the threat.

Over the past eight months, my colleagues at RAND have had several opportunities to offer congressional committees their assessments of the evolving threat posed by jihadist groups in the Middle East and North Africa.<sup>4</sup> While the focus of my colleagues and their interpretations of the evolving threat vary, I regard my own testimony to be the latest installment this continuing body of work.<sup>5</sup>

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<sup>1</sup> The opinions and conclusions expressed in this testimony are the author's alone and should not be interpreted as representing those of RAND or any of the sponsors of its research. This product is part of the RAND Corporation testimony series. RAND testimonies record testimony presented by RAND associates to federal, state, or local legislative committees; government-appointed commissions and panels; and private review and oversight bodies. The RAND Corporation is a nonprofit research organization providing objective analysis and effective solutions that address the challenges facing the public and private sectors around the world. RAND's publications do not necessarily reflect the opinions of its research clients and sponsors.

<sup>2</sup> This testimony is available for free download at <http://www.rand.org/pubs/testimonies/CT426.html>.

<sup>4</sup> See Seth Jones, *Jihadist Sanctuaries in Syria and Iraq: Implications for the United States*, testimony presented before the House Homeland Security Committee, Subcommittee on Counterterrorism and Intelligence on July 24, 2014; Ben Connable, *Defeating the Islamic State in Iraq*, testimony presented before the Senate Foreign Relations Committee on September 17, 2014; and Rick Brennan Jr., *The Growing Strategic Threat of Radical Islamist Ideology*, testimony presented before the House Foreign Affairs Committee on February 12, 2015.

<sup>5</sup> This testimony also builds on my recent previous research, as reported in *The Dynamics of Syria's Civil War*, Santa Monica, Calif.: RAND Corporation, 2014; *Brothers Killing Brothers: The Current Infighting Will*

Syria's civil war, Assad's brutal repression, the spread of jihadist ideology, the growing sectarianism of the conflict in Syria and Iraq, the military victories achieved by the Islamic State of Iraq and the Levant (ISIL), and, perhaps above all, ISIL's announced re-creation of the Caliphate have galvanized would-be jihadist warriors throughout the world.

According to the latest reported intelligence estimate, 20,000 foreign fighters have traveled from other countries to join the fight in Syria and Iraq.<sup>6</sup> Most are believed to have joined ISIL. "Estimate" is the operative word here, but if the number is close to correct, this would mean that foreign fighters now comprise a large portion of ISIL's total strength—estimated to be as many as 31,000 fighters—and enough to influence its trajectory. Most of the volunteers come from other Arab countries, but an estimated 3,400 have come from Europe and other Western countries and are therefore theoretically eligible to enter the United States without a visa. Most of these Western volunteers are believed to have joined ISIL, which now calls itself the Islamic State.

The coalition bombing campaign—which was intended to (1) contain ISIL by supporting partners on the ground, such as the Kurdish Peshmerga, who are reclaiming territory lost earlier to ISIL; (2) prevent ISIL from being able to move freely in Syria and Iraq; (3) disrupt and degrade its command and control; (4) reduce its logistical capabilities; and (5) target key leaders where possible—has taken a toll on ISIL's operational capabilities. But it does not appear to have significantly reduced the flow of Western fighters to Syria and Iraq: The reported numbers have continued to increase since the bombing campaign began in September 2014. In part, the growing numbers may reflect a time lag as authorities learn about those who departed before the bombing campaign began. However, there is evidence that the flow of recruits continues.

#### **ISIL's Recruiting Attracts the Violence-Prone**

ISIL operates a sophisticated recruiting program, which includes its highly publicized victories and its equally well-recorded atrocities. Its message is disseminated through its official outlets on the Internet and reinforced by a distributed recruiting campaign by its own members using social media. ISIL appeals to potential recruits' sense of religious duty—faith undeniably plays a role in recruitment, even though volunteers may not possess a profound knowledge of Islam. Like all true believers, recruits may be attracted by a simple black-and-white, us-versus-them belief

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*Test al Qaeda's Brand*, Santa Monica, Calif.: RAND Corporation, 2014; and *When Jihadis Come Marching Home: The Terrorist Threat Posed by Westerners Returning from Syria and Iraq*, Santa Monica, Calif.: RAND Corporation, 2014.

<sup>6</sup> Nicholas J. Rasmussen, Director of the National Counterterrorism Center, *Current Terrorist Threat to the United States*, testimony before the Senate Select Committee on Intelligence, February 12, 2015.



system. Poverty and oppression may explain why people in some countries embrace violent extremism, but it does not explain the flow of Western volunteers. Individual biographies of those who have gone to participate in jihad or have attempted to go suggest a variety of personal motives—alienation, perceived insults, personal crises, dissatisfaction with empty spiritual lives, adolescent rebellion, or other discontentment.

ISIL is a dangerous group. It distinguishes itself from other jihadist groups by continuing to publicize its limitless violence. This attracts a self-selecting assembly of individuals who are not repelled by graphic images of mass executions, beheadings, crucifixions, and burnings and who indeed may be attracted by opportunities to participate in such atrocities. They exult in violence. Gathering as a group in Syria and Iraq, they may reinforce each other's savagery, creating a constituency within ISIL that supports escalating violence.

This dynamic is present in most terrorist groups. For the ideologues who initiate terrorist campaigns, violence is instrumental—a means to achieve an end. Violent campaigns attract others who subscribe to the ideology but actually seek membership in a terrorist group as a source of status. For a third cohort, the prospect of violence is the principal attraction—ideology offers a license to kill.

Over time, the harder members of a group dominate decisionmaking. Their argument is always the same—if the group is not doing well, it must become more ruthless. If the group is doing well, escalation will accelerate progress. Hardliners cannot easily be reined in, even if the leaders want to restrain them. Commanders who counsel moderation risk being branded as traitors and eliminated, or hardliners may break off to form their own groups. This is not to say that we have any evidence at all of attempts by ISIL's leaders to moderate the group's activities; instead, they appear to encourage barbarity. Still, there must be some tension between those who want to build a state and those whose increasing barbarity makes them appear determined to trigger its destruction.

Transgression demonstrates conviction and binds the perpetrator to the cause. ISIL seems determined to separate its fighters from normal society. There are reports that the group forces recruits to commit atrocities to ensure their loyalty and reduce chances that they can ever return home.

The accumulation of atrocity increasingly precludes any resolution other than continuing warfare or death. For the group as well as for the individual, having crossed the line into nihilism, there is no way back.

### **ISIL's Calculated Ruthlessness—Strategic Calculation or Collective Madness?**

To the outside world, ISIL's escalating murder and destruction is incomprehensible. Rational explanations are required.

We invent strategic calculations (or miscalculations) that make mayhem logical. Analysts posit that ISIL's leaders intend its atrocities to provoke the rage that draws in foreign ground forces, where casualties and captures will erode resolve and impose a time limit on foreign military achievement, will incite responses that divide the coalition, or will precipitate action before ISIL's foes are fully prepared to take it on.

Continuing warfare changes the individual outlooks of those involved. Armed conflict can brutalize its participants. Violence, not just on the battlefield but in executions, torture, and mistreatment of prisoners, hostages, and the civilian population, becomes matter-of-fact. Atrocities become routine. This has effects on the mental condition of both the individual and the collective. A gathering of violent zealots can lead to collective madness in which sadistic cruelty becomes an end in itself, requiring no strategic explanation.

It may be unpleasant to contemplate, but we cannot dismiss the power of belief. ISIL has attracted the most fervent disciples to an extreme (many would say discredited) version of Islam, recruits who believe in the imposition of the cruelest form of Islamic law without compromise. This belief system may include apocalyptic thinking; the idea that escalating violence will hasten the final confrontation between true believers and the forces of evil. There is a fierce debate over whether ISIL represents or perverts Islam, but the fact that ISIL's theological pretensions are widely rejected by Muslim clerics, both militant and centrist, is not the point here. Polling data and a continuing flow of recruits from Europe indicate that ISIL's religiously justified violence resonates with some.

There will be Caligulas. To possess unchallenged power over other human beings, beyond the reach of retribution, immune from any restraining moral authority, allows license and cruelty.

Through its strategy of terror, exaltation of violence as a recruiting theme, attraction to and assembly of the most fervent and most ruthless followers, and deliberate rejection of any constraints, ISIL is creating a dangerous population that cannot be easily pacified or reabsorbed into normal life.

### **There Are Scenarios of Immediate Concern**

A long-term terrorist threat that survives the destruction of ISIL warrants our attention, but there also are several scenarios of immediate concern. These include the following:

- A 9/11-like scenario in which foreign volunteers on their way to the front lines in Syria or Iraq are instead recruited and supported to carry out a major terrorist strike in the United States. This is the 9/11 scenario, where the attackers were on their way to an active combat zone when they were instead diverted to a terrorist mission. It seems unlikely that in today's more vigilant environment, terrorists could mount an operation of that scale without being detected.
- A shoe-bomber or underwear bomber scenario in which a single volunteer is recruited and equipped for a suicide mission. There were reports in 2014 of such plotting by al Qaeda's Khorasan cell, a group of veterans sent from Afghanistan to Syria to recruit and deploy fighters with Western passports.
- 7/7 scenarios, named after the 2005 bombing of public transport in London, in which Westerners are provided with specialized training and dispatched to the West without further support.
- Low-level attacks carried out based on individual initiative. These could involve returning foreign fighters or homegrown terrorists responding to calls by ISIL or al Qaeda's affiliates to carry out attacks. These might include active shooter attacks and hostage situations as we have seen in Ottawa, Paris, Sydney, and Copenhagen.

### **ISIL Is not yet Committed to Attacking Western Foes on Their Own Territory, but Its Containment Could Change Its Strategy**

There is no indication yet that ISIL has initiated a terrorist campaign aimed at directly attacking its Western foes on their own territory. It has taunted and threatened the West in widely disseminated videos showing gruesome murders of Western nationals. It has called upon its supporters abroad to carry out similar acts of terrorism and has praised those who have done so.

However, unlike al Qaeda, which continues to follow a strategy of attacking the "far enemy," ISIL appears more focused on the expansion and defense of the territory it controls as the Islamic State. This reflects necessity. With an economy based on plunder and an army of fanatics, it is doubtful that the Islamic State could survive as a normal state within static borders even if its enemies were to allow it to try. It must continue to expand or it will consume itself.

Squeezed by ground offensives supported by foreign airpower, ISIL may at some point alter its strategy and carry out attacks abroad in an effort to break the coalition's political resolve. If ISIL does decide to launch attacks abroad, it will be able to draw upon its substantial financial resources and a deep bench of Western volunteers from among its existing fighters.

The defeat of the Islamic State could turn into a scenario of slaughter, as victims of its cruel occupation and even its one-time Sunni allies turn against it if only to preempt Shi'a retribution. But its destruction could also shatter the enterprise into a host of small, desperate groups, on the run, bent upon revenge.

If the Islamic State is brought down, where will its foreign fighters go? Facing a hostile reception if they had returned home, foreign volunteers who went to Afghanistan to fight Soviet invaders in the 1980s gathered under al Qaeda's banner. Some ISIL veterans will migrate to other fronts in Afghanistan, where ISIL has already set up shop; to the Caucasus, from which a large number of its foreign fighters, including a number of its commanders, come; or to Libya, where ISIL has found new allies. Some Western volunteers, disillusioned by their experience and with nowhere else to go, will simply want to come home. Others will direct their wrath toward the West.

Most face arrest if they return to their home countries, although European countries are divided on how to deal with returning fighters. Instead of prison, some countries want to offer rehabilitation and reintegration into society, at least to some returnees. It will likely be hard to determine the degree of individual participation in atrocities. Given ISIL's record, "re-humanization" may be a prerequisite to rehabilitation. Clearly, there are some advantages to offering a way back if it requires an open declaration of return and willingness to cooperate with authorities.

But rehabilitation programs have had mixed results, and resources for surveillance are already stretched by the number of people going to or returning from jihadist fronts. Authorities may not have the resources needed to effectively monitor significant numbers of individuals at large. This clearly was France's problem in dealing with the rapid rise in the number of persons going to Syria or contemplating going there. And jihadists have shown remarkable persistence, which means they may have to be monitored in some fashion for years.

I think it is safe to assume that foreign fighters from other countries seeking to enter the United States are more likely to have malevolent intentions than returning Americans. Their capabilities for putting together large-scale terrorist operations here may be limited, but not their intentions. ISIL's fighters have set a new benchmark for brutality. They have rejected all arguments to curb

their enthusiasm for bloodshed, whether from Islamic theologians or even al Qaeda's own leaders.

### **The American Experience**

Although the numbers continue to grow, the number of individuals from the United States going to jihadist fronts is, fortunately, not anywhere near the number that have gone from Europe. The most recent estimate puts the total of American volunteers at 150, including those who went for reasons related to the conflict in Syria but not to join jihadist fronts, those who attempted to go and were arrested on the way, and those who have gone and been killed while fighting for ISIL or other jihadist groups.

The historical experience of Americans going to other jihadist fronts (in Afghanistan, Pakistan, Somalia, and Yemen) indicates that, of 124 publicly identified Americans who went or tried to go abroad to join such fronts between 9/11 and the end of 2014, approximately one-third were arrested on the way. Of those who managed to connect with jihadist groups abroad, 24 were killed (six in suicide bombings), 13 were arrested while abroad, and 13 more are still at large. Of the 35 who returned, nine were involved in subsequent terrorist plots. Only three homegrown jihadist attacks in the United States resulted in fatalities. These were carried out by individuals who are not known to have received any terrorist training abroad.<sup>7</sup> (These figures represent only the publicly identified would-be jihadists; they do not include the total number of those who reportedly traveled to Syria or Iraq.)

Returning American fighters add a layer of threat, but—given their still-modest numbers—it is a threat that I believe is manageable within existing laws and resources. More-effective leveraging of local police can provide needed reinforcements.<sup>8</sup> As our focus here is on the Visa Waiver Program (VWP), returning Americans are a separate problem. Nevertheless, dealing with that problem should be viewed as part of an overall strategy.

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<sup>7</sup> Jenkins, *When Jihadis Come Marching Home*.

<sup>8</sup> Brian Michael Jenkins, Andrew Liepman, and Henry H. Willis, *Identifying Enemies Among Us: Evolving Terrorist Threats and the Continuing Challenges of Domestic Intelligence Collection and Information Sharing*, Santa Monica, Calif.: RAND Corporation, 2014. See also Business Executives for National Security, *Domestic Security: Confronting a Changing Threat to Ensure Public Safety and Civil Liberties*, Washington, D.C., 2015.

### **There Are Several U.S. Lines of Defense**

There are several potential lines of defense, each of which offers opportunities to identify and intercept foreign fighters before they are able to carry out acts of terrorism in the United States.

1. The first line of defense consists of all international efforts to reduce the number of volunteers going to jihadist fronts. While such efforts depend nearly entirely on foreign actions, the United States can nonetheless encourage and support them.
2. The United States could push for broader international efforts to intercept returning fighters, primarily efforts by Turkey and the European Union—especially front-line countries, such as Bulgaria and Greece, whose land borders returning fighters may try to cross. However, foreign fighters may deliberately take roundabout routes to evade detection. Right now, Turkey, as the entry and exit point for virtually all foreign fighters, is key to stemming the flow.
3. Intelligence sources may identify groups engaged in planning terrorist attacks against the West and disrupt their activities or specific plots while the would-be attackers are still abroad. The U.S. bombing of suspected Khorasan cells in Syria is an example of such an effort.
4. The Terrorist Identities Datamart Environment (TIDE), No Fly List, and other databases derived from intelligence sources are currently the primary mechanism for identifying returning foreign fighters. The question is how much they could be improved by better sharing arrangements with foreign partners in VWP countries. Intelligence-sharing arrangements are complicated and beyond the scope of my testimony. An agreement is in place that allows EU countries to share Passenger Name Record (PNR) information with the United States. In the wake of the recent terrorist attacks in Paris, EU interior ministers have proposed a Europe-wide plan that would require passengers to provide additional information, which would remain available to terrorism-related investigations for up to five years. The collection and sharing of such data would provide additional confidence that authorities in the EU and the United States will be able to accurately identify returning fighters. There is, however, strong opposition from civil libertarians. Meanwhile, 14 EU countries are setting their own PNR protocols. America's VWP partners clearly share our interests and will look for ways to enhance their own security at the same time.
5. The Electronic System for Travel Authorization (ESTA) is now in place and has recently been enhanced. It offers the rough equivalent of a visa application, and information obtained through ESTA is checked against the terrorism databases, which are managed by the National Counterterrorism Center (NCTC). Matches have been found, preventing

potential terrorists from entering the United States. The question here is, could ESTA be further enhanced?

6. Pre-boarding passenger screening offers a number of possibilities. Computer-Assisted Passenger Pre-Screening (CAPPS) was a program implemented on the recommendation of the White House Commission on Aviation Safety and Security in 1997. Using PNR information, CAPPS reportedly identified nine of the 19 hijackers on 9/11, although by that time the system had been effectively disconnected from the security checkpoint. CAPPS II, an improved version, was abandoned as unworkable. It was replaced by Secure Flight, which relies primarily on matching names with current watch lists.

Israel has historically relied heavily on pre-boarding interviews to screen passengers. The approach, however, is labor-intensive and is more difficult to apply to passenger loads more diverse than those flying on El Al, although in 2001, ICTS, a private security company contracted to interview passengers on U.S.-bound flights using the Israeli approach, correctly identified Richard Reid, the Shoe Bomber, as a person warranting further questioning.

The Transportation Security Administration (TSA) has spent nearly a billion dollars to train and deploy behavioral-detection officers in an effort to identify high-risk passengers, but the approach remains controversial. Many regard behavioral detection as bogus science, although it may have value as a deterrent. The criticism that behavioral techniques have not led to the apprehension of any terrorists is misleading. In fact, none of the security measures in effect at U.S. airports have led to the apprehension of any terrorists here, and insofar as I can recall, only one terrorist was actually intercepted at a checkpoint abroad. A number of new technologies based on detecting subtle physiological responses to questions or images are in development. We still have no "x-ray" for a person's soul.

Screening programs like TSA's Automated Targeting System (ATS) aim at flagging those who may pose a higher risk. An alternate strategy is to identify populations of passengers unlikely to pose any risk, thereby allowing security officials to more efficiently focus their efforts. An example is TSA's Pre-Check program for trusted frequent fliers. It may be possible for U.S. officials to develop algorithms aimed at identifying travelers entering the United States under the VWP who similarly are likely to pose little risk. The NCTC now works with the State Department and Customs and Border Protection (CBP) to establish screening rules that narrow the screeners' field of view so that they can concentrate on those they should be most worried about.

7. Pre-clearance procedures are being extended to a number of foreign airports. These allow passengers to complete immigration and customs formalities before boarding, but they also provide opportunities for interviews and behavioral observation.

8. Arrival screening and secondary interviews by U.S. Immigration and Customs Enforcement (ICE) and CBP offer the final line of defense before entry into the United States. It has already been recommended by a number of intelligence practitioners and experts that both agencies expand and enhance their intelligence capabilities.<sup>9</sup>

If all else fails, domestic intelligence efforts, which have already detected terrorist plots by foreigners coming here intending to carry out attacks, may thwart future terrorist plots. Arriving terrorists would still have to acquire weapons or explosives, which would increase their risks of exposure.

I, personally, have not done any research to determine precisely how each of these lines of defense might be improved. No doubt, some of the elements mentioned are already being examined by those in government, but from the perspective of congressional oversight, it is worth asking whether such examinations are in fact occurring. The challenge will be to integrate them into a national and international strategy aimed at intercepting foreign fighters before they enter the United States and before they return to VWP as well as non-VWP countries

The VWP offers considerable commercial, diplomatic, and cultural benefits. Abandoning the program could overstretch consular office resources and would not necessarily offer improved security. In fiscal year 2012, nearly 19 million people entered the United States under the VWP; in FY 2013, approximately 11 million residents of non-VWP countries applied to enter the United States on non-immigrant visas, of which 9 million were approved and 2 million were refused entry.<sup>10</sup> The application and review process requires extensive documentation by the applicant and extensive investigation by U.S. authorities, including an in-person interview with a consular official. Abandoning the VWP would more than double the current workload. The VWP is not perfect, but neither are non-VWP procedures. The objective should be a level of security higher than the level we had before the VWP was initiated.

The conflicts in Syria and Iraq will continue for the foreseeable future. We will be dealing with their effluent for many years. It is therefore incumbent upon us to develop effective means for preventing the spillover of terrorist violence.

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<sup>9</sup> Jenkins, Liepman, and Willis, *Identifying the Enemies Among Us*; and Business Executives for National Security, *Domestic Security: Confronting a Changing Threat to Ensure Public Safety and civil Liberties*.

<sup>10</sup> U.S. State Department, "Worldwide NIV [Non-Immigrant Visa] Workload by Visa Category FY 2013," 2013 (<http://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVWorkload/FY2013NIVWorkloadbyVisaCategory.pdf>). See also Alison Siskin, *Visa Waiver Program*, Washington, D.C.: Congressional Research Service, February 12, 2014.



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**TESTIMONY**

**OF**

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**OFFICE OF POLICY**

**U.S. DEPARTMENT OF HOMELAND SECURITY**

**AND**

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**NATIONAL TARGETING CENTER**

**OFFICE OF FIELD OPERATIONS**

**U.S. CUSTOMS AND BORDER PROTECTION**

**U.S. DEPARTMENT OF HOMELAND SECURITY**

**BEFORE**

**THE SENATE COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS**

**ON**

**“VISA WAIVER PROGRAM: IMPLICATIONS FOR U.S. NATIONAL  
SECURITY”**

**MARCH 12, 2015**

Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee, thank you for the opportunity to testify on behalf of the Department of Homeland Security (DHS) on the Visa Waiver Program (VWP).

The VWP permits nationals from 38 countries to travel to the United States for business or tourism without a visa for up to 90 days, provided they meet certain requirements and provide us with information we need for our security. The VWP enables more than twenty million of these travelers to travel without visas to the United States each year, if they receive authorization to do so after being screened against terrorist, criminal, and immigrant databases. In exchange for participation in the VWP, countries must adhere to stringent security cooperation standards that are not typical of other nations. Additionally, DHS itself maintains several layers of security to identify any possible risks, including rigorous vetting by Customs and Border Protection (CBP) for all travelers flying into and out of the United States, including those traveling under the auspices of the VWP. CBP serves as the frontline in defending America's borders from terrorism and protects our economic security by facilitating lawful international travel and trade. Not only does the VWP promote legitimate trade and travel it also promotes international travel security initiatives and enhances law enforcement and security cooperation with foreign governments. We will elaborate on the evolution of the VWP and the security benefits that it provides throughout this hearing.

#### **Background**

Congress first authorized the VWP as a pilot program in 1986 to facilitate low-risk travel to the United States, boost international trade and cultural links, and promote more efficient use of consular resources. Since the program's inception, Congress and the Executive Branch have worked together to implement a number of security enhancements. Over time the U.S. Government put new requirements in place to tighten passport security standards and increase the frequency with which the U.S. Government carries out assessments of countries' compliance with VWP security standards. The VWP has evolved into an important tool for increasing security standards, advancing information sharing, strengthening international partnerships, and facilitating legitimate trade and travel to the United States.

The Secure Travel and Counterterrorism Partnership Act of 2007, which was enacted as part of the Implementing the Recommendations of the 9/11 Commission Act of 2007 (the "9/11 Act"), transformed the VWP from a program that evaluated security threats on a country-by-country basis to a program with the added capability to screen individual travelers for potential threats that they may pose to the security or welfare of the United States and its citizens. In addition, the 9/11 Act mandated more robust information sharing between the United States and its VWP partners. Since the enactment of the 9/11 Act, DHS and its partner agencies have implemented those new requirements.

### **Rigorous Travel Screening**

Independent from the security partnerships strengthened through the VWP, DHS retains strong mechanisms for vetting any individuals traveling under the program. CBP operates the Electronic System for Travel Authorization (ESTA),<sup>1</sup> a web-based system through which eligible individuals traveling under the VWP must apply for travel authorization prior to boarding an aircraft destined for the United States. Through ESTA, CBP conducts enhanced vetting of VWP applicants in advance of travel to the United States in order to assess whether they are eligible to travel under the VWP or could pose a national security risk or public safety threat. Through interagency information sharing agreements, CBP provides other U.S. Government agencies ESTA application data for law enforcement and administrative purposes to help assess risk and make a determination about an alien's eligibility to travel under the VWP without a visa. Additionally, CBP requires air carriers to verify that VWP travelers have a valid authorization before boarding an aircraft bound for the United States.

ESTA has been a highly effective security and vetting tool that has enabled DHS to deny travel under the VWP to thousands of prospective travelers who may pose a risk to the United States, prior to those individuals boarding a U.S. bound aircraft. Since ESTA's inception in August 2008, CBP has approved over 80 million ESTA applications and has denied over 4,300 ESTA applications as a result of vetting against the U.S. Government's known/suspected terrorist watchlist. During that same period of time, CBP has also denied over 35,000 ESTA applications for individuals who applied for an ESTA using a passport that had been reported as lost or stolen. ESTA applications are also subject to continuous re-vetting, which means that even though an applicant has an approved authorization for travel, that authorization is continuously reviewed throughout its validity period for new derogatory information and is subject to further review and subsequent denial if necessary.

In response to increasing concerns regarding foreign fighters attempting to enter the United States through the VWP, DHS strengthened the security of the program through enhancements to ESTA. These improvements are designed to address the current foreign fighter threat, and provide an additional layer of security for the VWP. DHS determined that these ESTA enhancements would improve the Department's ability to screen prospective VWP travelers and more accurately and effectively identify those who pose a security risk to the United States. In addition, these enhancements to ESTA help the Department facilitate adjudication of ESTA applications. By requiring ESTA applicants to provide additional information, DHS can more precisely identify ESTA applicants who may be known or suspected terrorists. These enhancements also reduce the number of inconclusive matches that would previously have resulted in an ESTA denial.

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<sup>1</sup> ESTA is not required for citizens of countries under other visa exempt authority, such as Canada. Citizens of countries under visa exempt authority entering the U.S. via air and sea are subjected to CBP's vetting and inspection processes prior to their departure for the United States and inspection prior to admission. In the land environment, they are subjected to CBP processing upon arrival at a U.S. port of entry.

No single ESTA data element or security solution will completely address the challenge of preventing *mala fide* travel to the United States. It is the combined totality of ESTA alongside other DHS programs that forms our layered approach to strengthen security and help the U.S. Government address evolving threats. These layers of security are in place for visa holders as well as VWP travelers.

DHS vets travelers at several points along the travel continuum:

- During the travel planning phase, when a traveler seeks a visa or ESTA;
- Pre-departure, when a traveler seeks to board a commercial carrier or vessel, via collection and analysis of travel data (API/PNR) and liaison partnerships focused on travel security through the Immigration Advisory Program teams in certain VWP countries;
- Upon arrival at a port of entry, when a traveler seeks admission into the United States, including arrival processing programs such as the Counterterrorism Response (CTR) protocols;
- Partnerships with the Terrorist Screening Center (TSC), the National Counter Terrorism Center (NCTC), Immigration and Customs Enforcement (ICE), and the Federal Bureau of Investigation (FBI) and National Joint Terrorism Task Force (NJTTF) augment the screening process throughout;
- During the period of stay in the United States, when a non-U.S. person travels by air within the United States; and
- Upon departure, when a traveler leaves the United States.

In addition, DHS relies on domestic and international criminal records (e.g., investigative case files domestically, and INTERPOL notices internationally) to identify potential criminal movements. Moreover, DHS, through the Transportation Security Administration (TSA) as well as CBP, implements rigorous physical security requirements in the form of airport checkpoint and airline security standards, as well as through physical detection methodologies (e.g., drug sniffing canines) at ports of entry. DHS, including the U.S. Coast Guard, cooperates with commercial carriers and vessels to also review information about travelers, including their identity and travel documents, prior to arrival at a U.S. port of entry.

#### **Thorough and Regular Reviews of VWP Countries**

DHS—in cooperation with other departments and agencies—conducts intensive reviews of VWP countries focusing on five core areas: counterterrorism, law enforcement, border security, immigration and travel document security. These reviews take place at least once every two years and sometimes annually, last six to nine months, and incorporate participation from the Department of State, Department of Justice, and the Intelligence Community. Often they include site visits to the VWP country being reviewed as well. Whenever DHS identifies any recommendations for improvement or a specific remedial action, DHS follows up to ensure changes are carried out. In between the formal review cycles, DHS regularly monitors security, law enforcement, and immigration enforcement issues in all VWP countries to ensure continuing compliance with the program requirements.

Here are several unclassified examples of changes made by other countries as a result of DHS's intensive reviews:

- Prior to a VWP designation, DHS required one candidate country both to change its passport numbering system and to agree to accept the more rapid return of individuals with final orders of removals from the United States.
- DHS secured from another country new legislation on the reporting of lost and stolen passports to its domestic authorities and obtained a series of commitments to improve information sharing among its domestic law enforcement agencies.
- As recently as 2014, DHS placed one country on provisional VWP status due to issues related to passport fraud. During the period of provisional status, DHS is requiring the country in question to take certain actions to address concerns with passport fraud.

#### **Information Sharing Requirements**

Turning to other security measures required of VWP countries, the 9/11 Act mandates that VWP countries enter into agreements with the United States to share information regarding whether citizens and nationals of those countries represent a threat to the security or welfare of the United States and its citizens, as well as to share information on lost and stolen passports. DHS, with the support of our interagency partners, has determined that the preferred mechanisms to meet the information sharing requirements with VWP countries include: a bilateral Homeland Security Presidential Directive-6 (HSPD-6) Arrangement to exchange terrorism screening information; a bilateral Preventing and Combating Serious Crime (PCSC) Agreement to exchange information on possible perpetrators of serious crimes; and an exchange of diplomatic notes memorializing the intent to report lost and stolen passport data according to INTERPOL's standards.

When certain longstanding cooperation between the United States and a VWP country demonstrates an equivalent or superior level of information sharing, the U.S. Government may deem that to be a sufficient substitute for the above mentioned agreements. Without the leverage the VWP provides, the U.S. Government likely would not receive the same amount and quality of information. The information that VWP countries provide makes DHS pre-departure vetting, such as ESTA applications, even more valuable.

- All VWP countries have concluded an exchange of diplomatic notes with the United States confirming their intent to report lost and stolen passport data to the United States via INTERPOL or another acceptable mechanism. Furthermore, VWP countries have provided more than 70 percent of the total records in INTERPOL's Stolen and Lost Travel Document Database. DHS screens every ESTA application and every arriving traveler against this database. DHS has also seen a sharp decline in border encounters of lost and stolen travel documents after having mandated these provisions. This is particularly important in the context of the Syria and Iraq conflicts where terrorist groups may seek to obtain such documents for travel.

- PCSC Agreements establish the framework for a 21<sup>st</sup> century method of law enforcement cooperation by providing each party with electronic access to the fingerprint databases of the other party on a case-by-case basis. All VWP countries have signed a PCSC Agreement or its equivalent. The first exchanges of biometric information under the PCSC Agreements took place with a select group of countries in January 2012. Since then, DHS and the Department of Justice have begun exchanging information through an interim mechanism with several pilot countries. Through the first exchanges of data, DHS and the Department of Justice received actionable information that was previously unknown to U.S. law enforcement authorities.
- The Terrorist Screening Center implements HSPD-6 arrangements on behalf of the U.S. Government. Information provided through the HSPD-6 arrangements has enhanced DHS's traveler screening capabilities and bolstered the Department's ability to prevent known and suspected terrorists from traveling to the United States.

Information the United States provides VWP member countries under these agreements also helps those governments identify and disrupt criminal and terrorist travel to, from, and within their own borders.

#### **Evolution of the VWP**

Let us now turn to additional ways that DHS is addressing the concern that foreign terrorist fighters who are citizens of VWP countries might attempt to travel to the United States under the VWP. Even with layers of security, including pre-travel ESTA vetting of all prospective VWP travelers and the regular sharing of watchlists and other information on known and suspected terrorists with VWP countries, DHS is driving the program to respond even better to emerging threats and thus become even more secure.

As noted above, DHS has already taken administrative action to strengthen the security protections of the VWP by enhancing ESTA data collection, changes that went into effect on November 3, 2014. The acceptance of these ESTA enhancements by VWP countries, in particular our European partners, is both an indication of the seriousness with which they take the threat of returning terrorist fighters and a testament to the global security partnership the VWP promotes. As has been widely reported in the media, in recent months several European and other countries have also taken steps to strengthen their abilities to detect and prevent the travel of terrorist fighters. Furthermore, the European Union as a whole is taking steps to address this new threat. DHS has shared lessons learned and discussed some of these practical steps with its international partners. DHS continues to review the security safeguards of the VWP and is prepared to consider both administrative and legislative steps that might achieve our goals of even stronger security for the United States and increased security partnerships with VWP countries, while maintaining the economic benefits of the VWP. We will continue to partner with Congress to explore ways to enhance program's security requirements while promoting secure travel to the United States via the VWP.

**Conclusion**

DHS uses mutually reinforcing layers at all points in the travel continuum to secure VWP travel to the United States. The DHS security posture is flexible, and will continue to evolve as threats warrant and environments change. The VWP and all its elements are a vital part of a robust travel security system. They include the ESTA requirement; the mandatory bilateral information sharing on potential terrorists and criminals; sharing of lost and stolen passport data; thorough inspections of VWP countries' airport, border control, and identity and travel document security standards; and vigorous, ongoing monitoring of changing conditions in VWP countries.

We testify before you today as the United States and many of its VWP partners consider and respond to the new and evolving threat posed to us by foreign fighters traveling to or from the battlefield. DHS and all VWP countries have a joint stake in identifying foreign fighters due to common security interests. DHS will continue to work with our interagency partners, international partners, and industry partners to address emerging threats and identify potential security vulnerabilities. DHS is committed to facilitating legitimate trade and travel while maintaining the highest standards of security and border protection.

Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee, thank you for the opportunity to appear before you today and for your consideration of this important topic. It would be our pleasure to address any questions that you might have.



**DEPARTMENT OF STATE**

**WRITTEN STATEMENT  
OF  
EDWARD J. RAMOTOWSKI**

**DEPUTY ASSISTANT SECRETARY  
FOR VISA SERVICES  
DEPARTMENT OF STATE**

**BEFORE THE  
UNITED STATES SENATE  
HOMELAND SECURITY AND GOVERNMENT AFFAIRS COMMITTEE**

**HEARING  
ON  
THE VISA WAIVER PROGRAM: IMPLICATIONS FOR U.S. NATIONAL  
SECURITY  
MARCH 12, 2015**



Good morning Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee. I thank you for calling this hearing today and for your unwavering commitment to the Department's twofold mission to keep America safe while welcoming legitimate visitors who grow the U.S. economy and create jobs. The Visa Waiver Program is a vital part of our strategy to safely and effectively achieve both of these national interests, and I thank you for the opportunity to elaborate how this important program enhances the security of the United States.

#### **State's Role in the Visa Waiver Program Structure**

DHS is the lead agency for determining a country's eligibility for the Visa Waiver Program (VWP). Working in close cooperation with DHS, the Department of State's role in the process is to nominate countries for participation once they have met all the statutory requirements of the program. We will not nominate any country for VWP membership until all the conditions of U.S. law have been fulfilled. The Department is also usually the agency a candidate country reaches out to first in order to express interest in VWP, often through one of our missions abroad. We explain the VWP requirements that must be met before a country can be considered and facilitate communication between the host country and DHS. We play this role throughout the nomination and assessment process.

Once a country is in the VWP, its continued participation depends upon successful completion of a DHS-led review, done at least once every two years, of the security of its travel documents, its border controls, immigration and nationality laws, law enforcement policies and practices, other law enforcement, immigration, and national security concerns, as well as how wider political, social, and economic conditions impact the security environment.

#### **Pushing Borders Out**

Since 9/11, a risk-based approach grounded on greater and more effective domestic and international information sharing has become a key principle of visa processing policy. This approach enables the United States to channel more resources toward the prevention of high-risk travel while simultaneously increasing the number of legitimate visitors arriving by land, air, and sea. The VWP operates in concert with the U.S. Government's interagency watchlisting and screening enterprise, our increasingly automated and secure visa adjudication process, and DHS's multiple screening initiatives to enhance our national security.

The Electronic System for Travel Authorization (ESTA) for VWP travelers, which is administered by DHS, is an example of how U.S. agencies effectively use information collected from visitors in advance of travel to prevent terrorists and serious criminals from boarding a flight headed to the United States. Intending VWP travelers must first receive approval through ESTA. This involves filling out an online questionnaire with biographic information and paying an administrative fee, after which, similar to a visa application, ESTA screens against interagency databases for watchlisted individuals. If there is a positive match, DHS may deny the authorization, meaning the individual cannot utilize the VWP to board a U.S.-bound air or sea carrier. An individual denied an ESTA authorization must apply and be issued a U.S. visa in order to enter the United States. State and DHS recently collaborated on an enhanced list of questions for VWP travelers through the ESTA program. These questions will help to identify possible high-risk individuals attempting to travel through the VWP regime, without introducing an onerous administrative burden or privacy infringement on a potential traveler.

Individuals denied an ESTA authorization are not permitted to travel to the United States under the VWP and are referred to the appropriate U.S. Embassy or Consulate for visa screening. Should the would-be traveler wish to pursue travel to the United States by applying for a U.S. visa, he or she would undergo the comprehensive biographic, biometric, and interagency screening applied to all U.S. visa applicants. Consular officers review the results of Consular Lookout and Support System namechecks, 10-print fingerprints, facial recognition checks, Kingfisher Expansion counterterrorism checks, and, as it deploys around the world, DHS PATRIOT vetting, which will further improve the extensive information-sharing agreement that our two departments already manage.

Should the results of any of these checks or a consular officer determination so warrant, an interagency Security Advisory Opinion request would be transmitted to Washington and further action on the visa application would be suspended pending resolution of the particular concern.

This process ensures that a would-be traveler with a VWP-eligible passport cannot avoid vigorous interagency counterterrorism screening; it allows us to focus our scrutiny where it is most warranted; and it fosters the most efficient use of our homeland security resources.

### **Layered Security and the Added Value of International Data Sharing**

The Department embraces a layered approach to border security screening. The data we obtain through information-sharing agreements required by the VWP is a key element in this approach. In the Implementing Recommendations of the 9/11 Commission Act of 2007 Congress amended the primary VWP provisions of the Immigration and Nationality Act to require several enhanced security measures for participating countries, including more robust information sharing between the United States and its VWP partners. This is achieved through the completion of both a Preventing and Combating Serious Crime (PCSC) Agreement and a Homeland Security Presidential Directive-6 (HSPD-6) arrangement or their equivalent instruments with our VWP partner nations.

Under HSPD-6, issued in 2003, the U.S. Government was tasked with creating a plan to engage foreign partners, beginning with those in the VWP, to obtain information on known or suspected terrorists. The plan, submitted to the President in 2005, envisioned the Department engaging foreign partners to exchange terrorism screening information, and assigned the Terrorist Screening Center (TSC) to implement these agreements. In 2009, a National Security Staff-led Transborder Security Interagency Policy Committee reaffirmed that PCSC and HSPD-6 agreements are appropriate vehicles for satisfying the statutory information-sharing requirements in the 9/11 Act. Section 711 of the Act requires, among other actions, that the United States strengthen the security of the VWP by adding requirements that partner nations actively cooperate with the United States to prevent terrorist travel, including sharing counterterrorism and law enforcement information. To date, the U.S. Government has negotiated over 40 agreements with foreign partners to exchange terrorist screening information through the HSPD-6 model.

The Department coordinates closely with DHS on information sharing and border security programs with VWP partners, in order to provide our foreign partners the most comprehensive package to screen and interdict terrorist travel at the borders and ports. With our interagency counterparts, the Department has also engaged numerous VWP countries to better identify and counter foreign terrorist fighter threats.

#### **Countering Violent Extremism with our International Partners**

In its countering violent extremism (CVE) initiatives and programming abroad, the State Department focuses on and supports counter-radicalization, counter-recruitment and counter-messaging. In its multilateral CVE initiatives, in particular, State collaborates with DHS to both (1) design capacity building

activities, and (2) integrate DHS 's domestic CVE expertise and experience into those capacity building activities so that the expertise and experience are shared with international partners.

### **Conclusion**

The Department recognizes that the United States' long-term interests and security are served by continuing the flow of commerce and ideas that are the foundations of our prosperity and security. We also recognize the need to ensure that this flow does not include anyone who seeks to do us harm. The Visa Waiver Program is the key to protecting both of these vital pillars of our national security, enabling ever-increasing numbers of visitors to experience U.S. culture and contribute to our economy, while identifying those who pose a threat to our nation before they seek to board a plane. We have built strong partnerships throughout the interagency and with our international partners to ensure the real-time flow of information necessary for keeping our borders secure.

This concludes my testimony today. I will be pleased to take your questions.

**Post-Hearing Questions for the Record  
Submitted to Dr. Marc Frey  
From Senator Thomas R. Carper**

**“Visa Waiver Program: Implications for U.S. National Security”  
March, 12, 2015**

1. If the United States government had the capacity to collect authentic biometrics (such as fingerprints and photos) from travelers as part of the Electronic System for Travel Authorization (ESTA) application process, would that be a net benefit to our counter terrorism system? What obstacles would DHS face in setting up biometric collection in the ESTA process?

Answer:

As a general matter, the ability of the U.S. government to collect and validate additional information, including biometrics, through the ESTA application process would improve its border screening. At present, however, the security benefit of implementing such a program would be marginal at best and would adversely affect the Visa Waiver Program as a whole.

The security benefits would be marginal for the following reasons:

- Currently, all VWP travelers are required to provide biometrics (fingerprints and digital photos) upon arrival at the port of entry. A CBP officer oversees this process, running biometrics against databases and confirming identity. This process is in addition to the multilayered security vetting that occurs for each traveler prior to arrival.
- Currently, U.S. government watchlists are based primarily on biographic information. Accordingly, it is reasonable to assume that only a very small number of VWP travelers would be denied ESTA approval based on biometric “hits” as part of the ESTA application process. Photographs in particular would not provide a security benefit as U.S. and international criminal history databases are not designed to be searchable by photograph.
- Because of the likelihood of low-quality submissions, the false positive rate would increase dramatically, forcing DHS to spend time and resources ruling out those travelers who are not a threat.

Weighed against this marginal security benefit are enormous resource, logistical, and diplomatic obstacles, including:

- Currently, the technology does not exist to enable collection of usable biometrics through all of the methods VWP travelers use to submit applications, including smart phones and tablets and applications via travel agents and other third-parties. In addition, imperfect capture of biometrics will significantly slow processing time upon arrival.
- Absent a secure physical collection station or center, overseen by a trusted agent, there would be no mechanism to verify that the biometrics are those of the individual submitting the application. As a result, the risk of fraud would be unacceptably high.
- Setting up and staffing these physical collection stations would be enormously difficult and expensive. In effect, it would require DHS to establish an international footprint similar in scope and scale to that of the State Department.
- The alternative would require ESTA applicants to travel to a U.S. embassy or consulate to submit biometrics, thus negating the primary distinction between the VWP and the visa process and further straining the already overburdened consular system. This would especially be the case as VWP travelers would likely be required to submit biometrics every two years to correspond with the validity of the ESTA whereas in many cases visa applicants are required submit biometrics only every 10 years.
- Congress would need to appropriate additional funds or authorize the ESTA fee to be doubled or even tripled in order to implement such a system. As a result, the ESTA fee could exceed the cost of a visa over a 10-year period.
- VWP partners are very likely to oppose inclusion of biometrics with ESTA given the burdens it would place on their citizens, complicating U.S. relationships with these close allies and potentially inviting reciprocal requirements for U.S. citizens.

The net result of implementing collection of biometrics via ESTA would not increase security enough to justify the massive cost, potential for fraud, additional barriers to travel, and the negative impact on U.S. relations with VWP partners.

**Post-Hearing Questions for the Record  
Submitted to Marc Frey, PhD  
From Senator Joni K. Ernst**

**“Visa Waiver Program: Implications for U.S. National Security”  
March 12, 2015**

1. Are there situations when you have been instructed to intentionally allow high-risk individuals into this country to track them?

Answer: No.

2. What steps are taken to ensure that information entered into these databases are accurate? How do we prevent high-risk individuals from getting through our systems due to misspellings or other typos?

Answer: To my knowledge, DHS takes several steps to ensure that the information provided by applicants is accurate. For example, the ESTA application itself helps to prevent simple errors – such as typos or misspellings – by requiring that the applicant input key information such as name or date of birth more than once and that each of the entries match. In addition, DHS employs sophisticated screening algorithms designed to account for both similar names and common variations and misspellings. Finally, the system flags possible matches, e.g. if the name or date of birth is similar to one on watchlist, for a manual check.

## There Will Be Battles in the Heart of Your Abode

### The Threat Posed by Foreign Fighters Returning From Syria and Iraq

Addendum

Brian Michael Jenkins

RAND Office of External Affairs

CT-426/1

April 2015

Document submitted on April 17, 2015 as an addendum to testimony presented before the Senate Homeland Security and Governmental Affairs Committee on March 12, 2015

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Brian Michael Jenkins<sup>1</sup>  
The RAND Corporation

*There Will Be Battles in the Heart of Your Abode  
The Threat Posed by Foreign Fighters Returning From Syria and Iraq  
Addendum<sup>2</sup>*

Before the Committee on Homeland Security and Governmental Affairs  
United States Senate

April 17, 2015

The subsequent questions and answers found in this document were received from the Committee for additional information following the hearing on March 12, 2014 and were submitted for the record.

The subsequent questions and answers found in this document were received from the Committee for additional information following the hearing on March 12, 2014 and were submitted for the record.

**SENATOR CARPER:**

Can you please identify and detail some of the "root causes" that may be driving extremists to join the ranks of ISIS and al-Qaeda in Syria and Iraq? Additionally, what would be some of the "root causes" motivating foreign fighters to carry out attacks against the United States?

**JENKINS RESPONSE:**

Concern about al-Qaeda and ISIS recruiting Western foreign fighters who might be turned around to carry out terrorist attacks or return to continue their terrorist campaigns at home has renewed discussions of *root causes*. Why do people become terrorists? Or, more specifically, in light of its advertised atrocities, how could anyone be attracted to anything as abominable as ISIS?<sup>3</sup>

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<sup>1</sup> The opinions and conclusions expressed in this testimony are the author's alone and should not be interpreted as representing those of RAND or any of the sponsors of its research. This product is part of the RAND Corporation testimony series. RAND testimonies record testimony presented by RAND associates to federal, state, or local legislative committees; government-appointed commissions and panels; and private review and oversight bodies. The RAND Corporation is a nonprofit research organization providing objective analysis and effective solutions that address the challenges facing the public and private sectors around the world. RAND's publications do not necessarily reflect the opinions of its research clients and sponsors.

<sup>2</sup> This testimony is available for free download at <http://www.rand.org/pubs/testimonies/CT426z1.html>.

<sup>3</sup> My response to this question prompted considerable discussion among my colleagues at RAND, many of whom have been working on these topics for years. I am indebted to them for their helpful comments and in particular wish to thank Richard Brennan, Anita Chandra, Ben Connable, Jayme Fuglesten, Seth Jones, Andrew Liepman, Jack Riley, and Henry H. Willis. The topic provoked a spirited exchange with Paul K. Davis, to whom I owe special thanks.

### **No Terrorist-Prone Personalities**

*No single root cause explains why some individuals choose to become terrorists while others do not.* In the 1970s, the first decade of contemporary terrorism, there were numerous efforts to identify a terrorist-prone personality—some identifiable pathology that would explain the seemingly crazy behavior of terrorists. None could be found.

Researchers found that terrorists shared no physiological defects or psychological disorders. Behavioral scientists found evidence of self-identity problems among some terrorists, not uncommon among many young people. Many who joined terrorist groups seemed prone to disillusion. Among terrorists (but also among people who were not terrorists), there were true-believer types drawn to rigid, no-room-for-doubt belief systems—black-and-white, us-versus-them ideologies. There were racists and ideological and religious fanatics.

Some sought personal risk to prove their commitment. Some were willing to commit suicide for a cause. But terrorists were not found to be crazy in any clinical sense, although one could find among them what psychologists used to call sociopaths and now refer to as persons with an antisocial personality disorder. The violent videos of ISIS would seem to appeal to this particular type.

### **“Root Cause” a Code for Inaction**

When researchers in the 1970s found that personal pathology did not appear to create terrorists, they turned to the environment. Could root causes, they asked, be found in economic, political, historical, societal, or situational factors that induced this particular form of political violence? Because terrorism did not affect the world evenly, with some areas experiencing much higher levels of terrorism, was there such a thing as a terrorist-prone country? Did the explanation for terrorism lie in the absence of democratic means of expressing dissent? Was terrorism a response to continuing colonialism and the label “terrorism” itself an imperialist plot to delegitimize “national liberation” movements?

Discussions of root causes, which often reflected Cold War divisions and Third World attitudes, tended to delay efforts to enlist international cooperation in practical efforts to deal with immediate problems. Instead of focusing on preventing or discouraging airline hijackings or attacks on diplomats, who were supposed to be internationally protected, international meetings wandered off into futile debates about whether some perpetrators were freedom fighters who should not be labeled “terrorists” because their objectives were legitimate.

Frustrated pragmatists saw “root causes” as code for efforts to portray terrorists as victims of society’s ills, thereby mitigating their actions. The term still carries this connotation and risks misunderstanding.

#### **Socioeconomic Grievances an Inadequate Explanation**

Some notions emphasize the importance of socioeconomic grievances in terrorist recruitment. According to these theories, poverty, lack of education, and unemployment are the root causes of terrorism. Therefore, economic development, better education, and the provision of jobs will reduce the number of those who become terrorists. This has become a fundamental tenet of counterinsurgency strategy that aims to maintain the allegiance of the population by improving its condition. But it may not work in reducing terrorist recruitment. In fact, a recent RAND study examining how the United States ended its participation in the Iraq war at the end of 2011 found that the largest counterinsurgency and nation-building effort since the Korean War had little effect on the Iraqi public’s perceptions and had no effect on those willing to engage in terrorism.<sup>4</sup>

Insurgencies may or may not use terrorist tactics, but very few terrorist campaigns manage to ascend to full-scale insurgencies. They simply lack the numbers to control territory or population. Very small gangs—a handful of people—can carry on terrorist campaigns. The specific causes they pursue can be either extremely narrow or so broad as to be meaningless, such as “worldwide revolution.” These campaigns seldom challenge the survival of the state, although they may make it more oppressive.

Insurgency requires much greater strength in numbers and must compete with the state for support. ISIS has managed to do this. Government measures to improve the lives of the people may reduce popular support for the insurgents, however, making it more difficult for them to operate and recruit.

Terrorist groups also may claim popular support, but here the total numbers are less important. Terrorists need only to find like-minded individuals within a narrow slice of their claimed constituency. Government efforts to improve the well-being of the population have little effect in impeding terrorist recruiting; there are enough recruits.

Economic and social conditions are unreliable indicators of terrorism. It is true that Somalia and Afghanistan are among the poorest countries in the world, and both have suffered significant terrorist violence, but overall, it is difficult to discern any correlation between low per-capita GDP and high levels of terrorism.

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<sup>4</sup> Rick Brennan, Jr., Charles P. Ries, Larry Hanauer, Ben Connable, Terrence K. Kelly, Michael J. McNerney, Stephanie Young, Jason H. Campbell, and K. Scott McMahon, *Ending the U.S. War in Iraq: The Final Transition, Operational Maneuver, and Disestablishment of United States Forces-Iraq*, Santa Monica, Calif.: RAND Corporation, RR-232-USFI, 2013.

At the same time, Western European nations with high per-capita GDPs—Germany, Italy, Spain, and the United Kingdom—all saw high levels of domestic terrorist violence in the 1970s and 1980s. Argentina, Uruguay, and Brazil had the most advanced economies in Latin America in the early 1970s, but they were also the most affected by terrorist violence. Colombia is a democracy with a sophisticated economy, a well-regarded education system, and better than 90-percent literacy rates. It has also suffered extremely high levels of political violence, including terrorism. The United States itself saw high levels of domestic terrorist violence during the 1970s, when there was an average of 50 to 60 terrorist bombings a year.

America's high levels of youth-driven, anti-establishment political violence in the 1970s, much of which reflected so-called New Left ideologies and opposition to the Vietnam War, subsided after several notable actions. In particular, the voting age was lowered from 21 to 18 in 1971 and both parties made efforts to recruit younger voters, America withdrew from the Vietnam War in 1973, and conscription was ended the same year. These measures were implemented as part of a national strategy to reduce violence and channel political activism into acceptable outlets. The measures all seemed to help; the loss of popular support contributed to the decline of the few tiny groups that took up arms.

What lessons can we draw from this experience? First, a cautionary note: Nearly a half-century after these events in our own country, the root causes of this "rebellion" and its end remain a puzzle. It is not obvious why so many young people in an affluent society—especially university students—turned against American material and social values in the 1960s and 1970s. It certainly had little to do with economic deprivation. Opposition to the Vietnam War counts as a precipitating factor. Ending the war removed that particular cause, but there were other contributing factors. The radicals confused popular protest with support for a revolution, which was never there. There was a public backlash against the bombings. The United States had a less ideological society than it has today. The political system proved to be resilient and co-optive. Law enforcement was effective.

One lesson from the 1970s cannot be applied to the current situation in Syria and Iraq. Anger against American government policy at that time was undercut by significant political concessions—ending the war, ending the draft, and extending suffrage to younger voters. It is difficult to imagine making comparable concessions to jihadists. The United States cannot realistically offer to assist in constructing the Islamic State envisioned by ISIS or to accommodate the desires of fundamentalists for separate legal regimes here, even if it were believed that this would reduce the terrorist threat.

### Instead of Root Causes, Multiple Factors

The assertions that terrorism is a consequence of oppression or economic deprivation do not work at the individual level either. Some terrorists are dead-end kids, but just as many come from middle-class families in the suburbs, and some are extremely wealthy. Some have criminal backgrounds, but others are well educated, with advanced degrees in medicine, pharmacology, engineering, or other career-track professions. This is especially true among the leadership of radical movements. Much of America's political violence in the 1970s was driven by university students.

A RAND study of individuals convicted in the United States since 9/11 for providing material support to jihadist terrorist organizations, attempting to join jihadist fronts abroad, or plotting to carry out attacks in the United States showed a diverse group. Of 95 individuals for whom information was available, 24 were high school dropouts, 21 had high school diplomas or their equivalent, 38 had attended some college, and 12 were college graduates; six of these had gone on to receive postgraduate degrees.<sup>5</sup>

A separate study of domestic Islamic terrorists arrested in the United States showed the alleged terrorists to be somewhat better educated than the general population of Muslim Americans. Overall, they did not appear to be deprived.<sup>6</sup>

To note that most terrorists are not impoverished or that poverty itself is not an indicator of terrorism is not to say that desperate people may not be inclined to embrace extremist ideologies or join millenarian movements that promise salvation from their hardships in this world or the next. It is simply to note that empirical evidence does not support a causal relationship between economic deprivation and terrorist recruitment.

Recent research at the RAND Corporation suggests that it is a mistake to focus on root causes. They are only one part of the picture, not necessarily the most important part, and they tend to be less accessible to external fixes. Rather than having any single causal factor, joining the ranks of a terrorist organization appears instead to be the result of multiple factors, including motivation, countervailing influences, even circumstances. The combinations and relative importance of detailed causes also vary.<sup>7</sup>

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<sup>5</sup> Brian Michael Jenkins, *Stray Dogs and Virtual Armies: Radicalization and Recruitment to Jihadist Terrorism in the United States Since 9/11*, Santa Monica, Calif.: RAND Corporation, OP-343-RC, 2011.

<sup>6</sup> Alan B. Krueger, "What Makes a Homegrown Terrorist? Human Capital and Participation in Domestic Islamic Terrorist Groups in the USA," *Economics Letters*, Vol. 101, Issue 3, December 2008, pp. 293–296.

<sup>7</sup> See Paul K. Davis and Kim Cragin (eds.), *Social Science for Counterterrorism: Putting the Pieces Together*, Santa Monica, Calif.: RAND Corporation, MG-849-OSD, 2009; in particular, see Darcy M. E. Noricks, "The Root Causes of Terrorism," pp. 11–70, and Todd C. Helmus, "Why and How Some People Become Terrorists," pp. 71–111.

### Why Some Join Jihadist Groups

People have joined the ranks of ISIS and al Qaeda in Syria and Iraq for a number of reasons.<sup>8</sup> Their motives have evolved over time. Initially, the popular rebellion against the Bashar al-Assad government in Syria and the regime's brutal response attracted widespread sympathy and supporters from neighboring Arab countries, as well as some from the West. At the same time, al Qaeda and other extremist groups sought to exploit the growing conflict to establish a new foothold. Al Qaeda's affiliate in Iraq, which was then called the Islamic State of Iraq (ISI), sent operatives to organize a Syrian front. In 2012, this became Jabhat al-Nusra (or simply al-Nusra), which is now al Qaeda's official affiliate in Syria.

The continuing insurrection spawned numerous rebel formations. These reflected secular and religious perspectives. Loyalties were fluid. The jihadists had the advantage of better funding and therefore offered better compensation and better weapons. They proved to be the most effective forces in the field and attracted fighters from other groups in Syria. Their jihadist ideology also brought recruits from other countries seeking opportunities to fight and gain combat skills and international contacts that would be valuable in future jihads. Some were recruits sent to Syria by extremist groups in other countries. Others came as individual volunteers. Over time, jihadist ideology appears to have gradually superseded anti-Assad sentiments as the driving force behind the recruitment of foreign fighters.

A dispute in 2013 over who would command the jihadists in Syria led to a major schism between al-Nusra, backed by al Qaeda's central leadership, and ISI, which changed its name to the Islamic State of Iraq and Syria, or ISIS. Both competed for local and foreign fighters. Both continued to actively recruit foreigners.<sup>9</sup>

### Luring Westerners to the Front

ISIS appears to have been more successful than al-Nusra in attracting Westerners. It asserts its authenticity by advertising its ruthless application of what it regards as Islamic law. The view of Islam that ISIS embraces is ultra puritanical and claims to be based on the earliest teachings of the Prophet Mohammed and his successors. While there are differences in tactics and the types of violence that should be employed to ensure adherence to Islamic law, the foundations for this belief system can be found in other Islamic fundamentalist movements. The opportunity for participating in unlimited violence appeals to a particular brand of recruits who accept this fundamentalist view and who are not repelled by

<sup>8</sup> Brian Michael Jenkins, *When Jihadis Come Marching Home: The Terrorist Threat Posed by Westerners Returning from Syria and Iraq*, Santa Monica, Calif.: RAND Corporation, PE-130-1-RC, 2014.

<sup>9</sup> Brian Michael Jenkins, *Brothers Killing Brothers: The Current Infighting Will Test al Qaeda's Brand*, Santa Monica, Calif.: RAND Corporation, PE-123-RC, 2014.

images of mass executions, beheadings, crucifixions, or burning people alive and even may desire to participate in such atrocities.

In 2014, ISIS announced a further transformation, declaring the re-creation of the caliphate as the “Islamic State,” with ISIS’s leader Abu Bakr al-Baghdadi as the caliph, under Islamic tradition the supreme religious and political authority, and thereby commanding the loyalty of all Muslims worldwide. While this pretension has been rejected by both moderate and militant Muslim theologians, the existence of an actual homeland—what many fundamentalists see as an authentic expression of Islam as opposed to what they regard as the corrupt states that pretend to be Muslim—has nonetheless caused great excitement. It has galvanized extremists and rallied another set of recruits—individuals not necessarily intending to be fighters but simply wishing to live with like-minded believers. The broad appeal of the Islamic State should not be underestimated.

Rigorous research remains to be done, but it appears that Westerners join al Qaeda, whether in Syria and Iraq or elsewhere, for many reasons. Religious beliefs are an important component. Those who deny this are, well, in denial. This does not mean that the individuals wanting to join are always the most devout Muslims or that they are even knowledgeable about the tenets of their faith. Nonetheless, they subscribe to the jihadist ideology of perpetual war against the West and a personal obligation to defend Islam against what is portrayed as infidel aggression. End-time thinking and the idea of an inevitable final showdown color their thinking; many also believe in the various versions of promised bliss in the afterlife if they are killed. And in violent expressions of religion, some may find justification, even approval, of their own aggressive tendencies. Research suggests that personal identity and religious belief become intertwined with predilections toward violence, as well as cultural acceptance of violence.<sup>10</sup>

But other personal motives also figure into their decision. These include feelings of alienation, especially among young Muslims who have grown up in a post-9/11 environment in which many Muslims feel themselves to be objects of suspicion and discrimination. Rebellion against society, anger over perceived insults, dissatisfaction with their lives, personal crises, adolescent angst, and the desire to participate in an epic struggle that will give meaning to their lives or demonstrate manhood through warrior exploits also appear among their motives. Some see the Islamic State as a utopia. Teenage girls have succumbed to romantic visions of marriage to dashing SIS fighters.

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<sup>10</sup> Paul K. Davis, Eric V. Larson, Zachary Haldeman, Mustafa Oguz, and Yashodhara Rana, *Understanding and Influencing Public Support for Insurgency and Terrorism*, Santa Monica, Calif.: RAND Corporation, MG-1122-OSD, 2012.

Initially, there also were those who could be called "jihadi tourists"—young men who went to Syria and pretended to be fighters, yet they stayed clear of the fighting while taking self-portraits and boasting of their adventures to their friends back home. Growing danger has reduced their ranks.

#### **The Flow of Volunteers Continues Despite U.S. Bombing**

The American-led bombing campaign in Iraq and Syria would seem to further increase the danger of going there, but thus far, it does not appear to have slowed the flow of foreign recruits. Mid-2014 estimates of the number of foreign fighters in Syria and Iraq put the total somewhere between 12,000 and 15,000. U.S. bombing began in Iraq in August and the next month expanded into an international bombing campaign; it was extended to Syria in September. However, by fall 2014, the estimate of the total number of foreign fighters in Syria and Iraq had grown to 16,000, and by the end of February 2015, the U.S. Director of National Intelligence, James Clapper, testified that ISIS alone had 20,000 foreign fighters in its ranks.<sup>11</sup> This is an increase of between 33 and 66 percent despite the bombing campaign. The tally of 20,000 is consistent with the United Nations report on foreign fighters, which also includes those in Afghanistan, Somalia, and Yemen, for an overall total of 25,000. According to the report, this is a 71-percent increase since mid-2014.<sup>12</sup>

U.S. intelligence estimates put the total number of recruits coming from Europe and other Western states at 3,400.<sup>13</sup> France's prime minister warned that as many as 10,000 European volunteers could be in Syria and Iraq by the end of 2015.<sup>14</sup> The number of Americans going or attempting to go to Syria and Iraq is much smaller, although it already exceeds the total number traveling to all other jihadist fronts. In August 2014, the total was reported to be somewhere between 70 and 100. By September, this estimate had risen to 130. Clapper's testimony in February 2014 put the estimate at 180.<sup>15</sup>

What is driving this increase? Does it reflect growing religious fundamentalism and political assertiveness worldwide, or does it reflect new communication strategies? Both al Qaeda and ISIS have exploited the Internet to communicate with adherents and inspire potential recruits, but they differ in how they have done so. Al Qaeda followed a hierarchical approach, establishing official websites, reinforced by tiers of secondary outlets and private communicators.

<sup>11</sup> James R. Clapper, Opening Statement to Worldwide Threat Assessment Hearing, Senate Armed Services Committee, February 26, 2015.

<sup>12</sup> BBC News, "UN Says '25,000 Foreign Fighters' Joined Islamist Militants," April 2, 2015.

<sup>13</sup> Clapper, 2015.

<sup>14</sup> Agence France Presse, "10,000 Europeans Could Be Waging Jihad by Year-End: French Prime Minister," March 8, 2015.

<sup>15</sup> Clapper, 2015.



ISIS also has its hierarchy of websites, but ISIS activists know how to manipulate social media to ensure that their messages achieve trending topic status and are seen by even more followers. And ISIS encourages direct messaging between its fighters and their home-country audiences of followers. They communicate in the online acronyms and slang and secret insider codes that regular users of social media adore. Seen in terms of a marketing effort, ISIS has more online outlets than al Qaeda and addresses its audience in more-captivating language.

Its emphasis on social media means that ISIS also reaches a younger audience. The median age of Americans going to jihadist fronts in Afghanistan, Pakistan, Somalia, and Yemen up until about 2011, when the Syrian conflict began, was the mid-20s. ISIS seems to be attracting more teenagers—an impressionable and more unsettled group, prone to loneliness and eager for adventure. Adoring teenage fans, however, are a fickle audience; the appeal of ISIS could turn out to be a fad.

#### **Different Regions, Different Incentives**

The necessary research has yet to be done, but let me offer a personal hypothesis on the lure of Syria and Iraq to volunteers from different parts of the world. The vast majority of foreign fighters come from neighboring Arab countries. They are close enough to feel a part of the conflict. They go to Syria as a matter of personal commitment and for instrumental reasons. Fighting in Syria will provide them with the skills needed to advance their cause at home. This applies also to the Chechens living in Russia or as refugees in Europe; others coming from North African countries such as Libya and Tunisia; Uzbek, Kazakh, and Kyrgyz fighters from Central Asia; and Muslim separatists from China.

The exodus of volunteers traveling to Syria from Europe reflects the collective experience of communities as well as individual biographies. Muslim diasporas have not all been easily assimilated in Europe, due to both immigrant resistance and local discrimination, despite government policies encouraging multiculturalism. Feelings of disorientation and alienation are especially acute among second-generation immigrants. For them, the Islamic State offers a utopia, free from the prejudice and hostility they may feel.

Americans going to Syria and Iraq also complain about the prejudice and hostility they face in America, but the mixture of motives includes more personal rather than community issues. Americans migrating to the Islamic State see it as a permanent move. They have no intention of returning.

Obviously, this is a simplification, which detailed analysis may prove wrong. A sense of religious commitment provides a powerful incentive for many of those going, regardless of origin. And no doubt, personal factors play an important role in all decisions. Nonetheless, there appears to be a difference between those going to gain combat experience for future jihads, those coming from isolated

communities, and those driven primarily by personal circumstances, and these differences appear to correspond with geographic origins.

### **Looking Ahead**

Not all of those going to Syria and Iraq to volunteer for ISIS are destined to be fighters. Some are arrested on the way, some are killed while there, and some have already returned. Debates continue about whether all of those arrested while trying to travel there for terror-related reasons should be prosecuted as terrorist supporters or those coming back should be viewed as potential terrorists. History suggests that most of the returnees are unlikely to engage in acts of terrorism, but whatever their original reasons, time spent in Syria or Iraq will change their outlook. While some will return disillusioned, others will be further radicalized by their experience in the region.

Some already see the United States as the enemy of Islam. Their experience in Syria and Iraq is likely to reinforce that view. They will live among the most violent extremists, and they will be complicit bystanders, if not participants, in routine atrocities. They will be targets of U.S. military operations and see their companions killed. There will be ample motives for acts of revenge. These are the individuals who pose a long-term threat of conducting attacks against the United States or their country of origin.

National interest, not fear of terrorism, drives U.S. policy. American warplanes are bombing the Islamic State. U.S. military interventions may provoke terrorist attacks, a reality we must accept. In today's warfare, there is no distinction between front lines and home fronts. Terrorists make no distinction between combatants and civilians. A decision to employ military force puts American military personnel in harm's way. It also exposes those at home to the threat of terrorism, although the risks of harm at home are statistically very small. The notion of war with zero casualties is unrealistic. The idea of war that requires no sacrifice by any but soldiers and their families is morally unwholesome.

### **Ambitious Social Engineering Projects Are Not Warranted**

No single root cause explains the phenomenon of terrorism, and there is no single combination of the detailed causes involved. Instead, it must be accepted that terrorism, which is simply one form of political violence, results from multiple factors. It is possible to describe and explain these, but prediction remains far more difficult.

Concern about whether and how to address fundamental problems of society—the absence of democracy, oppressed or marginalized communities, poverty, and lack of education and economic

opportunity—is appropriate on its own merits. But there can be no illusions that doing so will effectively prevent or reduce violent extremism.

It is politically incorrect to say so, but religious belief is a causal factor, even if we prefer to call it an ideology that is drawn from or that distorts religion. This is not to say that any faith is flawed. This is delicate turf and requires careful calibration. To focus on the religious component concedes legitimacy to the adversary, risks alienating the broader community, broadens the definition of the adversary, and could make measures to combat terrorism look like a religious war. Clearly, that would be counterproductive. But to ignore a religious component altogether, ban any mention of it as a factor, or pursue unsupportable theories of root causes is to miss an important point. Doing so risks losing credibility and provoking reactions that also are not helpful.

Any effort to address this issue entails risks of misunderstanding. It is, therefore, important to keep in mind the still very small numbers of persons who choose to join jihadist groups abroad or carry out terrorist actions in the United States. We are talking about handfuls of people. They are dangerous, but they do not threaten the republic as long as we keep our heads. The very small numbers and the differences among individuals also mean that any program aimed at preventing radicalization and recruitment will yield small results, measured numerically, and therefore may not be worth the investment and the risks entailed.

This does not mean that benign neglect is appropriate—but it does suggest caution. Encouraging families and communities to dissuade their sons, daughters, and friends from taking a destructive path and encouraging local authorities, including police, to be sensitive to the stresses that current events have created in certain communities is one thing. Ambitious social engineering projects to influence behavior are not warranted.

**Post-Hearing Questions for the Record  
Submitted to Mr. Mark Koumans and Ms. Maureen Dugan  
From Senator Thomas R. Carper**

**“Visa Waiver Program: Implications for U.S. National Security”  
March 12, 2015**

**Question:** If the United States government had the capacity to collect authentic biometrics (such as fingerprints and photos) from travelers as part of the Electronic System for Travel Authorization (ESTA) application process, would that be a net benefit to our counter terrorism system?

**Response:** The Electronic System for Travel Authorization (ESTA) system is an added security measure to the Visa Waiver Program (VWP). ESTA is an online application process that vets VWP traveler’s biographic information against anti-terrorism databases prior to approval for travel into the United States and on a recurring basis. All foreign visitors, which include VWP travelers, are subject to biometric collection, security checks and identification screening upon their arrival in the United States. Therefore, biometric collection for VWP travelers already occurs at the ports of entry. The current process is beneficial to the overall security because a U.S. Customs and Border Protection Officer oversees the biometric collection, confirms that the information was collected from the individual seeking entry, and verifies that the traveler was checked against the appropriate security databases.

The use of any cost effective additional data source or biometrics to authenticate or validate traveler information enhances and benefits the U.S. Government’s ability to prevent or deter terrorist travel. While the benefits are potential, significant resource and logistic challenges exist to achieve the secure collection of biometric data from VWP applicants. The Department has not estimated the costs and benefits of expanding the ESTA application to include biometrics. One logistical challenge involves the physical collection requirement associated to biometric collection as part of the ESTA application process. The ESTA applicant can log into the ESTA portal through any electronic platform that connect to the internet and apply for travel authorization. However, this online environment does not allow for the biometric collection in advance of arrival to the United States. Under existing conditions, establishing remote and secure biometric collection capability in all countries that a VWP applicant may live would be costly and is expected to have significant adverse impacts on the U.S. Government’s ability to promote tourism and trade.

**Question:** What obstacles would DHS face in setting up biometric collection in the ESTA process?

**Response:** The VWP is a reciprocal arrangement with participating countries. The U.S. Government has not negotiated with our VWP partner nations to allow for the collection

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| <b>Question#:</b> | 1                                                            |
| <b>Topic:</b>     | ESTA                                                         |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable Thomas R. Carper                               |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

of biometrics for individuals applying for VWP status. Biometric collection requirements on VWP nations can adversely impact the ability of a U.S. citizen to travel freely through VWP nations.

The process of setting up biometric collection in the Electronic System for Travel Authorization (ESTA) process would add a significant cost to the ESTA application process thereby making the benefit to the traveler less cost effective. CBP has the authority to recover the full cost of administering the ESTA program through the fee charged to the traveler upon applying for authorization to travel. Currently, this fee is \$4. If the cost of an ESTA application should increase to \$40-\$50 every 2 years, it would become equal to that of the visa application process, or even more expensive for nationals of some VWP countries, effectively negating a key tourism benefit of ESTA.

The requirement to collect biometrics from ESTA travelers at the time of application would deter last minute applicants, causing serious concerns for the airlines. Many carriers depend on those travelers being able to apply at the airport and still being able to travel. If such travelers are not in their home country or not near a collection site, they would have to be denied boarding, potentially affecting the departure time, or other business decisions of airlines.

Establishing a remote and secure biometric collection capability in all countries where an ESTA traveler may live would be expected to have significant costs and minimal security benefits that are not otherwise realized through alternate means. In order for the biometric collection process to be useful for U.S. Customs and Border Protection (CBP), the biometrics collection must be supervised by a trusted agent in order to ensure the data is collected from the prospective traveler and not from another person. A different collection regime would require CBP to establish a biometric collection capability similar to the scope, scale, and cost of that of U.S. Department of State as part of its visa application adjudication process. To achieve that capability, CBP would be required to significantly expand its international footprint to all VWP countries and possible additional countries where many ESTA eligible travelers reside.

An effect of the higher costs and logistical requirements stemming from a biometric requirement for ESTA applications could very well discourage legitimate trade/travel/tourism to the United States, which in turn would constitute a negative economic impact in the form of lost business revenues. Absent a secure biometric enrollment to match against, self-nominated biometrics (e.g., from an ESTA applicant's smartphone or other such device) would be potentially unusable or low-quality, untrustworthy and vulnerable to spoofing by dedicated adversaries. Therefore, it is likely that a biometric requirement for ESTA would necessarily require an applicant to make a

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| <b>Question#:</b> | 1                                                            |
| <b>Topic:</b>     | ESTA                                                         |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable Thomas R. Carper                               |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

trip from their domicile to a U.S. Embassy, Consulate, or other “trusted” facility, thus raising new barriers to travel and rendering the ESTA process markedly less distinct from the traditional visa application process.

While many, if not all, U.S. Embassies are equipped with some biometric collection technologies (i.e., digital fingerprint scanners) to facilitate and secure the traditional visa application process, the sheer volume of individuals who would otherwise be ESTA travelers could strain existing systems and resources, particularly in VWP countries with high volumes of travel to the United States. Depending on the current volume of ESTA travelers from specific countries, additional resources/staffing may be needed to handle a surge in biometric enrollments/transactions at sites overseas. Lastly, there is no existing process for determining what would constitute a “trusted” biometric collection facility outside of U.S. Embassies or other such diplomatic outposts.

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| <b>Question#:</b> | 2                                                            |
| <b>Topic:</b>     | VWP Fraud Task Force                                         |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable Thomas R. Carper                               |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

**Question:** As we understand, DHS's Visa Waiver Program Fraud Task Force is charged with looking at improper or unlawful use of the Visa Waiver Program. To this point, what has the Task Force found?

**Response:** In May 2014, the U.S. Department of Homeland Security (DHS) established the Visa Waiver Fraud Task Force (VWFTF) to identify and target Transnational Criminal Organizations that seek to exploit fraudulent passports issued by Visa Waiver Program (VWP) countries. The VWFTF supports the interests of the United States by detecting, disrupting, and deterring VWP passport fraud. Members of the VWFTF include U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, the Office of Biometric Identity Management, the Office of Operations Coordination, and U.S. Citizenship and Immigration Services. In addition, the Visa Waiver Program Office (VWPO) is both a close partner and a customer.

The VWFTF uses fingerprint and biographic vetting to identify aliens who have changed identity and country of citizenship to facilitate entry into the United States with a fraudulent VWP passport. After reviewing travel records from the previous decade, the VWFTF has identified approximately 1,000 fraudulent VWP passports, of which approximately two-thirds were used by individuals who were admitted to the United States. By comparison, approximately 170 million travelers used the VWP to enter the United States during the same time period. The approximately 1,000 cases of fraudulent VWP passports were identified after reviewing 15-20 percent of all VWP travelers between 2004 and April 2015. The VWFTF has used this information to successfully identify patterns, post lookouts, and prioritize cases for criminal investigation. Information generated by the VWFTF has also been used by the VWPO to engage VWP member countries on passport fraud-related issues. As a result, some VWP countries have then changed their procedures in response to these DHS requests, increasing the security of their passport issuance processes and improving the reporting of passport data to DHS. In addition, DHS and the Department of State have added the fingerprints of all nonimmigrant visa refusal applicants from certain countries to the Automated Biometric Identification System (IDENT) watchlist. These additions to the IDENT watchlist have helped CBP prevent several fraudulent VWP passport bearers from entering the United States.

**Post-Hearing Questions for the Record  
Submitted to Mr. Mark Koumans and Ms. Maureen Dugan  
From Senator James Lankford**

**“Visa Waiver Program: Implications for U.S. National Security”  
March 12, 2015**

**Question:** How many individuals who entered the United States under the Visa Waiver Program have overstayed?

**Response:** Identifying nonimmigrant overstays is important for national security, public safety, and immigration benefits management, as well as for informing decisions about countries’ eligibility to participate in the Visa Waiver Program (VWP). Nonimmigrants are admitted into the United States for specific, temporary purposes, and generally are classified as having overstayed if they fail to: depart prior to the expiration of the authorized period of admission; extend stay in the same status; change to a new nonimmigrant status; or adjust status to lawful permanent residence.

Accurately and reliably estimating overstay rates has historically been a challenge because of the numerous records involved and the difficulties matching algorithms linking those records. The Department has not released overstay numbers previously due to concerns about the quality of the data that has been collected.

During the past two years, DHS has made tremendous progress in its ability to accurately report data on overstays—progress made possible by Congressional approval of realignments of Department resources in order to better centralize the overall mission in identifying and sanctioning overstays. The Entry/Exit Transformation Office was established within the Office of Field Operations at CBP in FY 2014, and included transferring oversight of the Arrival-Departure Information System (ADIS) to CBP.

That said, DHS believes the rate of overstays among nonimmigrants who enter the United States for business or pleasure under the VWP is quite low. Because of their country’s participation in the VWP, VWP travelers are not required to obtain a visa to enter the United States but must go through the Electronic System Travel Authorization (ESTA) in advance of departure, are subject to Transportation Security Administration (No Fly and Selectee List) screening as well as screening by U.S. Customs and Border Protection (CBP) before they land in the United States, and once again upon entry into the United States. If CBP has concerns about the traveler’s intent to overstay his or her period of admission, the CBP officer has the authority to deny the traveler admission into the country.



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| <b>Question#:</b> | 3                                                            |
| <b>Topic:</b>     | VWP overstay 1                                               |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable James Lankford                                 |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

**Question:** Please provide specific details regarding information sharing between the United States and Central American countries regarding those crossing our borders. In particular, how much and to what extent are Central American countries providing criminal background information for those entering the United States.

**Response:** Central American countries have shown a willingness to share information with DHS in many ways. Partner nation authorities in Central America, including immigration services and border police, collect biometrics in cooperation with U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Transnational Criminal Investigative Units (TCIU) and through HSI's Biometric Identification Transnational Migration Alert Program (BITMAP). TCIUs facilitate information exchange and rapid bilateral investigation of violations within the ICE HSI investigative purview. TCIU priority investigative areas include transnational crimes that affect the host country, with an emphasis on those also affecting the security of the United States.

BITMAP is an initiative driven by the host country with which ICE HSI International Operations, in collaboration with other U.S. Government agencies, assists TCIU members and other cooperating foreign law enforcement officers in the collection of biometric and biographic data of special interest and other aliens. This program involves ICE HSI's foreign law enforcement partners collecting fingerprints, iris scans, facial photographs, and biographic information on suspect individuals and subsequently sharing this information with ICE HSI. With the BITMAP program, the host country owns the biometric data and shares the information with HSI for intelligence and screening. Currently, the Governments of El Salvador and Guatemala utilize BITMAP.

ICE Enforcement and Removal Operations (ERO) manages the Criminal History Information Sharing (CHIS) program, which is a DHS-led information sharing initiative between the U.S. Government and its international partners. Through CHIS, DHS provides its partners with valuable criminal conviction information on foreign nationals in advance of their removal from the United States, and the foreign government shares criminal conviction information it has obtained that is of interest to the United States.

CHIS is a vital international public safety tool that facilitates the exchange of foreign conviction data to ICE that would have previously gone unknown. Criminal history information sent to participating countries is limited to 85 egregious felonies. DHS signed a CHIS agreement with the Government of El Salvador on May 14, 2014, with the Government of Guatemala on July 9, 2014, and with the Government of Honduras on August 19, 2014. CHIS data transmissions are operational in El Salvador, Guatemala, and Honduras.

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| <b>Question#:</b> | 3                                                            |
| <b>Topic:</b>     | VWP overstay 1                                               |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable James Lankford                                 |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

In Panama, U.S. Customs and Border Protection (CBP) and ICE HSI partner with the Government of Panama through the Joint Security Program (JSP) at the Panama City Tocumen International Airport to interdict and target high risk passengers and contraband. JSP-PTY originally began on September 26, 2011, and became fully functional when the GOP shared Advance Passenger Information with the United States in August 2012. A team of CBP officers and HSI agents work with Panamanian counterparts at Tocumen Airport to identify and interdict illicit travelers transiting the airport, which is a major regional hub.

The JSP is supported by Panama's National Center for Passenger Information (the Spanish acronym is CNIP), a program similar to CBP's National Targeting Center for Passengers. Through the CNIP, the Government of Panama collects Advance Passenger Information and shares this data with CBP. CBP, in turn, analyzes the data and shares information related to high risk passengers with Panamanian officials, which is then acted upon by the JSP.

Although many Central American countries have shown a willingness to engage in information sharing programs, numerous challenges remain. Central American countries have a number of operational limitations related to a lack of financial and technological resources, as well as a shortage of personnel. For example, to utilize the CHIS program, DHS and host country governments need to ensure that both the equipment and staff are ready to process the data when the system is operational, and these requirements can run up to hundreds of thousands of dollars per country.

**Post-Hearing Questions for the Record  
Submitted to Mr. Mark Koumans and Ms. Maureen Dugan  
From Senator Rob Portman**

**“Visa Waiver Program: Implications for U.S. National Security”  
March 12, 2015**

**Question:** In response to an inquiry that I sent to FBI Director Comey in October 2014 expressing my concern for the foreign fighter threat, the FBI replied that “fighters flowing out of Syria and into Europe can enter the United States with lessened scrutiny because these are visa-waiver countries, creating a national security risk.” Do you agree with the FBI that foreign fighters from countries participating in the Visa Waiver Program can enter the United States with lessened scrutiny?

**Response:** Respectfully, DHS disagrees with Director Comey’s assessment that Visa Waiver Program travelers face “lessened scrutiny,” but recognizes the threat posed by foreign terrorist fighters with Visa Waiver Program (VWP)-eligible passports. It is essential to understand that the VWP represents a single element of DHS’s layered approach to securing the travel continuum. Would-be VWP travelers must submit an online application through the Electronic System for Travel Authorization (ESTA) prior to travelling to the United States. DHS screens the information from all ESTA applications against U.S. holdings, including the Terrorist Screening Database, both when the application is received and immediately prior to the applicant’s travel, and again upon entry into the United States, through the collection and analysis of Advance Passenger Information and Passenger Name Records. CBP performs additional screening, including fingerprint collection and an interview, on foreign travelers arriving in the United States, regardless of the individual’s eligibility for VWP. Recurrent vetting of ESTA data ensures that individuals who possess valid ESTAs and later become known to pose a threat to the United States are identified and prevented from traveling or prioritized for removal if they have already arrived. Individuals whose ESTAs are denied may not travel to the United States under the VWP and must apply for a visa through a U.S. Embassy or Consulate.

In addition to ESTA, U.S. Customs and Border Protection (CBP) operates the Preclearance and Immigration Advisory Programs at several key airports in VWP countries. These programs enable CBP to screen travelers at overseas locations prior to travel to prevent high-risk travelers from boarding planes bound for the United States. CBP performs additional screening, including fingerprint collection and an interview, on all travelers arriving in the United States, regardless of their airport of departure. If the CBP Officer detects any irregularities, he or she retains the authority to deny a traveler’s entry to the United States.

Lastly, and perhaps most importantly, countries participating in the VWP are required to meet stringent security standards and accede to arrangements to share counterterrorism,

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| <b>Question#:</b> | 4                                                            |
| <b>Topic:</b>     | foreign fighter threat                                       |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable Rob Portman                                    |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

serious criminal, and lost and stolen passport information with the United States. DHS requires every VWP country to have law enforcement and intelligence services that are capable of identifying and responding to threats faced by that country, including the threat posed by foreign terrorist fighters. Moreover, all VWP countries have arrangements to share information about known or suspected terrorists with the United States. VWP partners have already provided 5,500 known or suspected terrorist identities to the United States via these arrangements. This sharing has enhanced our ability to screen U.S.-bound travelers for connections to terrorism. DHS continues to urge its partners to make terrorism information sharing even more routine.

DHS acknowledges that no single program is capable of deterring one hundred percent of threats one hundred percent of the time. That is why we continue to develop new, innovative, and mutually-reinforcing methods to address the evolving threat environment. Last November, for instance, Secretary Johnson announced the collection of additional data through the online ESTA application. These changes have already produced benefits to traveler screening, which DHS is prepared to discuss in a classified setting. At the Secretary's instruction, DHS is examining a series of proposals by which to further strengthen the VWP. Furthermore, CBP is currently evaluating the expansion of the Preclearance Program to additional airports in Europe, Asia, and the Middle East. These efforts will help to ensure that the U.S. border is not the first but the last line of defense against terrorists and other *mala fide* travelers.

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| <b>Question#:</b> | 5                                                            |
| <b>Topic:</b>     | areas of conflict                                            |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable Rob Portman                                    |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

**Question:** Does the Visa Waiver Program enable the Department of Homeland Security to detect whether citizens from participating countries have previously traveled to areas of conflict in the Middle East and North Africa, such as Syria, Iraq, Yemen, and Nigeria? If so, how does the Department collect that information?

**Response:** The Visa Waiver Program (VWP) contributes to U.S. government efforts to detect whether citizens from participating countries have previously traveled to areas of conflict in a number of ways. DHS requires VWP country to have law enforcement and intelligence services that are capable of identifying and responding to threats, including the threat posed by foreign terrorist fighters. In addition, DHS regularly assesses the security capabilities of VWP partners through queries to U.S. interagency partners, consultations with U.S. Embassies, and in-country site inspections. These efforts allow DHS to identify and help address potential gaps in VWP partner capabilities, including their ability to detect foreign terrorist fighter travel.

As a general rule, improving the ability of our VWP partners to detect foreign terrorist fighter travel improves our own ability to do so, because all countries must have an arrangement to share terrorism information with the United States prior to designation for participation in the VWP. This information substantially enhances our ability to identify known and suspected terrorists.

Lastly, DHS collects and analyzes Advance Passenger Information (API) and Passenger Name Records (PNR) for all incoming flights and continues to urge VWP countries to do the same. Systematic use of these tools would strengthen our VWP partners' abilities to screen inbound and outbound travelers. Furthermore, these capabilities would also improve the ability of our VWP partners to share their knowledge of foreign terrorist fighter travel trends.

DHS would be pleased to provide additional details in a classified setting.

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| <b>Question#:</b> | 6                                                            |
| <b>Topic:</b>     | Visa Waiver countries                                        |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable Rob Portman                                    |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

**Question:** What processes are in place for the United States and countries participating in the Visa Waiver Program to identify and track foreign fighters from Visa Waiver countries?

**Response:** Participation in the Visa Waiver Program (VWP) promotes better information sharing between the United States and international partners to prevent terrorist travel. VWP countries are required, pursuant to section 217(c)(2)(F) of the Immigration and Nationality Act (INA), to conclude information sharing agreements with the U.S. Government regarding known, suspected, or potential terrorists and serious criminals. VWP countries are also required, pursuant to section 217(c)(2)(D) of the INA, to enter into an agreement to report information on lost and stolen passports (LASP) to the United States via INTERPOL or another mechanism as designated by the Secretary of Homeland Security.

Through the VWP-related terrorism screening information sharing arrangements, the U.S. Terrorist Screening Center (TSC) receives specific information that enhances DHS's ability to prevent known and suspected terrorists from traveling to the United States. Although details are classified and there are limitations to these agreements, the United States has gained knowledge on over 5,500 known or suspected terrorists thanks to these arrangements with VWP countries.

Primarily as a consequence of the VWP statutory requirement to report LASP information, VWP countries supply more than seventy percent of the lost and stolen travel document records that appear in INTERPOL's Stolen and Lost Travel Document (SLTD) Database. This is especially important because VWP travelers must obtain advance authorization to travel to the United States through the Electronic System for Travel Authorization (ESTA). Information in ESTA applications is continually vetted against the SLTD database. Approximately 35,000 ESTA denials are the result of INTERPOL SLTD database "hits" which represent about 75% of total denials. In 2014, in response to increasing concerns regarding foreign fighters, DHS strengthened the security of the VWP by adding a series of additional questions to the ESTA application, to include other names/aliases and citizenships, contact information, and city of birth. The United States also screens Advance Passenger Information (API) that it collects on all incoming international flights against the SLTD database.

Furthermore, the United States and its VWP partners support initiatives to counter foreign terrorist fighter travel consistent with United Nations Security Council Resolution

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| <b>Question#:</b> | 6                                                            |
| <b>Topic:</b>     | Visa Waiver countries                                        |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable Rob Portman                                    |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

(UNSCR) 2178. UNSCR 2178 highlights steps that all nations should pursue to combat foreign terrorist fighter travel more effectively and “encourages Member States to employ evidence-based traveller risk assessment and screening procedures including collection and analysis of travel data.” The United States already takes such steps.

As a matter of policy, DHS also takes into account the discretionary security-related considerations of the VWP described in section 217(c)(9) of the INA (airport security standards in the country; whether the country assists in the operation of an effective air marshal program; the standards of passport and travel document issuance by the country; other security-related factors such as the country’s counterterrorism cooperation with the United States) when conducting continuing designation reviews of VWP countries.

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| <b>Question#:</b> | 7                                                            |
| <b>Topic:</b>     | violent extremist organizations                              |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable Rob Portman                                    |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

**Question:** Do countries participating in the Visa Waiver Program take action to track and potentially detain individuals who are denied entry into the United States due to concerns that the travelers from those countries may be affiliated with violent extremist organizations?

**Response:** Countries participating in the Visa Waiver Program (VWP) are the United States' closest security partners. Generally speaking, VWP countries will, to the extent that their capabilities and authorities allow, track and detain known and suspected terrorists of which they are aware. Additional details can be provided in a classified setting.



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| <b>Question#:</b> | 8                                                            |
| <b>Topic:</b>     | increased security measures                                  |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable Rob Portman                                    |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

**Question:** What countries have increased their security measures as a result of their interest in participating in the Visa Waiver Program?

**Response:** Eleven partners have been designated in the Visa Waiver Program (VWP) since passage of the *Secure Travel and Counterterrorism Partnership Act of 2007*, which was enacted as part of the *Implementing Recommendations of the 9/11 Commission Act of 2007* (the “9/11 Act”). These partners—the Czech Republic, Estonia, Hungary, South Korea, Latvia, Lithuania, Malta, and Slovakia (each of which were designated in 2008); Greece (2010); Taiwan (2012); and Chile (2014)—had to demonstrate substantial counterterrorism, law enforcement, border control, document security, and immigration enforcement capabilities to merit designation in the VWP. Their efforts often required significant investments in modern technology, such as the creation of integrated databases, or the inclusion of biometric information in travel and identity documents. Some countries had to change legislation to be able to implement the security and information sharing measures that are required of all VWP countries. Countries that aspire to join but do not yet qualify for the VWP are steadily improving their systems and capabilities to meet the exacting VWP standards. For example, many VWP aspirant countries have begun to report information on their lost and stolen passports to INTERPOL on a regular basis and have either started or are planning to issue biometrically enabled passports (“e-passports”) to all their citizens. Many VWP aspirant countries are also working with U.S. Customs and Border Protection (CBP) and other U.S. Government agencies to improve the screening of international travelers at their ports of entry.

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|-------------------|--------------------------------------------------------------|
| <b>Question#:</b> | 9                                                            |
| <b>Topic:</b>     | visa refusal rate                                            |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable Rob Portman                                    |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

**Question:** Do you believe the current visa refusal rate required by the Visa Waiver Program should remain at three percent or less? What consequences could result from raising the visa refusal rate required for the program?

**Response:** DHS generally supports efforts introduced in Congress to enhance the VWP by allowing the program to expand while maintaining the program's high and consistent security standards. Additionally, DHS—through the Electronic System for Travel Authorization (ESTA)—has developed an enhanced ability to screen and recurrently vet VWP travelers in the time since the three percent visa refusal rate requirement was put into place. In DHS's view, the passage of appropriate legislation amending the VWP statute would update VWP designation requirements to reflect current realities, protect U.S. immigration interests, and potentially expand the program to new countries that demonstrate a strong commitment to security cooperation with the United States.

The Department supports legislation, which would allow the Secretary of Homeland Security, in consultation with the Secretary of State, to waive the low non-immigrant visitor visa (B-1/B-2) refusal rate (currently set at less than 3 percent) up to a maximum of 10 percent, provided that the designated country also has an overstay rate of not more than 3 percent. During the past two years, DHS has made tremendous progress in its ability to identify overstay rates—progress made possible by Congressional approval of realignments of Department resources in order to better centralize the overall mission in identifying and sanctioning overstays.

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| <b>Question#:</b> | 10                                                           |
| <b>Topic:</b>     | administrative requirements                                  |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable Rob Portman                                    |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

**Question:** Do you believe that compliance with Visa Waiver Program requirements can be improved by reinforcing administrative requirements through legislation?

**Response:** The Department of Homeland Security (DHS) is studying whether compliance with Visa Waiver Program (VWP) requirements can be improved by reinforcing administrative requirements through legislation. We are also prepared to consider additional administrative and legislative changes necessary to achieve our goal of enhancing our security partnerships with VWP countries.

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| <b>Question#:</b> | 11                                                           |
| <b>Topic:</b>     | consular interviews                                          |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable Rob Portman                                    |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

**Question:** What is the value of requiring consular interviews for visa-applicants? Can improvements or alternatives to the consular interview provide for a greater security measure within the visa application process?

**Response:** (The Department of State is answering this question. It has been rerouted by the Committee.)

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|-------------------|--------------------------------------------------------------|
| <b>Question#:</b> | 12                                                           |
| <b>Topic:</b>     | Passenger Name Record (PNR)                                  |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable Rob Portman                                    |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

**Question:** Has the Department of Homeland Security considered modifying its current Passenger Name Record (PNR) system? If so, what modifications is the Department considering?

**Response:** Under 49 U.S.C. section 44909(c)(3) and its implementing regulations (19 C.F.R. §122.49d), airlines operating flights to, from, or through the United States are required to provide electronic access to Passenger Name Record (PNR) data to the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP). CBP maintains PNR information in the Automated Targeting System-Passenger (ATS-P), the system of record for PNR. CBP has collected PNR information since data became available under a voluntary program in 1992. CBP's collection of PNR data became legislatively mandated after the 9/11 attacks.

As the data steward for this information, CBP continually reviews and modifies the ATS-P system to ensure that it leverages the most current, available information on evolving terrorism and law enforcement threats and maintains strong security and access controls for authorized use of PNR information. The enhancements made to ATS-P improve DHS/CBP use of PNR and allow DHS/CBP to:

- Respond to the latest available information on evolving terrorism and law enforcement threats;
- Evaluate and deploy up-to-date automation solutions and analytical tools; and
- Conform to applicable laws, regulations, and international agreements such as the 2011 US-EU PNR Agreement, pertaining to data protection and privacy.

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| <b>Question#:</b> | 13                                                           |
| <b>Topic:</b>     | PNR systems                                                  |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable Rob Portman                                    |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

**Question:** What support has the Department of Homeland Security provided to its foreign counterparts to establish or improve PNR systems?

**Response:** The Department of Homeland Security (including U.S. Customs and Border Protection) has provided numerous and extensive briefings, both in Washington and abroad, to partner nations on the development of systems to vet Passenger Name Records against risk indicators. These briefings have included countries and multilateral organizations from every region of the world. Some partners have sought more technical support, which DHS has provided, through the Automated Targeting System - Global Initiative. In addition, DHS has worked extensively with the International Air Transport Association and World Customs Organization to develop the PNRGov data standard, which standardizes the format airlines use to report PNR to governments. This work should greatly reduce challenges for both airlines and governments when using PNR for security purposes.

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| <b>Question#:</b> | 14                                                           |
| <b>Topic:</b>     | PNR sharing                                                  |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable Rob Portman                                    |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

**Question:** How can the United States encourage and support the European Union and its member states as they work to build a more robust information sharing system, including the expansion of PNR sharing? What steps is the Department of Homeland Security taking to support these efforts?

**Response:** The United States has met regularly with European Union Member States, the European Commission, and the European Parliament to explain the value of PNR to security screening and offer advice on how to develop systems for using the data and legal regimes governing its use. For example, as recently as March 2015, DHS briefed Members of the European Parliament's Justice, Civil Liberties and Home Affairs Committee (LIBE) who were visiting Washington DC on DHS's efforts to better inform the European Parliament's debate. Members told DHS they found the briefing very useful. DHS has also sent delegations to EU hosted seminars with Member States to explain how to build an effective system. Bilaterally, DHS has provided more in-depth advice on systems requirements through the Automated Targeting System – Global initiative. DHS will continue all of these efforts to continue assisting the EU and its Member States develop programs to vet PNR information for risk.

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| <b>Question#:</b> | 15                                                           |
| <b>Topic:</b>     | exit data                                                    |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable Rob Portman                                    |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

**Question:** Is exit data collected by any means other than through flight manifests? What pilot programs are currently being tested or are planned to be tested to improve the exit processing system? How has DHS allocated, planned, or repurposed existing funds to better track exits? What would be the positive and negative consequences for requiring electronic passports to be scanned for foreign travelers exiting the country?

**Response:** The collection and analysis of departure data is important for both the integrity of the U.S. immigration system and combating criminal activities and terrorism for several reasons. First, when matched with entry information on the same individual, it provides information identifying those who abide by U.S. laws and those who overstay their period of admission and, therefore, break U.S. immigration laws. Second, it allows enforcement agencies (such as Immigration and Customs Enforcement (ICE)) to more effectively prioritize their resources. For example, without departure information, an enforcement agency may be searching for someone who has already left the United States, an effort that would waste time and money. Third, departure data provides valuable law enforcement and national security information. Some foreign nationals seeking to visit the United States have ties to criminal activities, including drug/people smuggling, organized criminal enterprises, or terrorism. Knowledge of departure can potentially enhance an individual's status and assist in detecting the individuals that do not abide by the terms of their admission and may still be in the country.

Unfortunately, departure information is difficult to obtain because of how U.S. transportation infrastructure has evolved over time. Airports in the United States were not designed to support collecting information from travelers upon departure from the United States. In the air environment, travelers departing the United States follow essentially the same process as travelers flying between domestic airports. The traveler checks-in either electronically or in person with the airline, checks baggage if necessary, goes through the TSA security checkpoint, and proceeds directly to the gate. Accordingly, any departure-control process necessitates operating within this difficult environment.

DHS would prefer all electronic and non-electronic passports scanned at the time of departure, as such data would enhance DHS's mission capabilities. The costs of doing so, however, are a significant constraint. Although Federal law requires international airports to provide – at no cost to the government – space for processing of aliens seeking admission to the United States, no such legal requirement exists for the processing of



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| <b>Question#:</b> | 15                                                           |
| <b>Topic:</b>     | exit data                                                    |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable Rob Portman                                    |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

travelers leaving the United States. As mentioned, U.S. airports were therefore built without such a requirement in mind.

Requiring U.S. Customs and Border Protection (CBP) to have a presence at every international air departure gate would be extraordinarily expensive, or require extensive recapitalization of U.S. airports. In all of our analyses on biometric exit, the cost drivers are overwhelmingly staffing needs. As a result, DHS is seeking lower-cost ways of collecting departure information, such as leveraging emerging biometric technologies to make deployment of a biometric exit system more cost-effective.

Currently, exit data is collected in the air environment through the submission of flight manifests by air carriers. The program is very extensive and well-defined, with airlines fined for non-compliance. Air and sea carriers are required by law to submit the manifests of passengers departing the United States to CBP, which then records those passengers as having departed the United States. The carriers are required to provide data not simply on who has made a reservation for a particular flight, but who is actually on the aircraft at the time the aircraft departs. Airlines can be, and often are, fined for making errors in terms of who is or is not on any particular aircraft.

CBP will be testing two pilot exit programs in 2015, one in the air environment and one in the land environment, in addition to the expansion of a third program that is currently operational.

- **Biometric Exit Mobile:** In summer 2015, CBP will begin collecting a sample of biometric exit data using mobile fingerprint collection devices on selected flights departing from major U.S. airports. The collections will be done by CBP officers deployed to departure airline gates. This program will provide a small amount of biometric departure data as well as support ongoing auditing of biographic data provided through airline manifests.
- **Land Exit Pedestrian:** In fall 2015, CBP will begin a pilot program collecting biometric data from departing pedestrian travelers at a land port of entry in California. The program will also collect biographic exit information at the land environment, a capability that largely does not exist today on the Southern border. The program will help identify the appropriate staffing needs to support such a potential program in the future as well as better identify the issues with the collection of biometric information in an outdoor environment.
- **Northern Border Land Exit:** On June 30, 2013, Canada and the United States began exchanging entry data for third-country nationals, permanent residents of Canada, and

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| <b>Question#:</b> | 15                                                           |
| <b>Topic:</b>     | exit data                                                    |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable Rob Portman                                    |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

lawful permanent residents of the United States, who enter through land points of entry along the shared border, where information can be collected electronically. As a result of this initiative, the United States now has a working land border exit system on its Northern border for non-U.S. and non-Canadian citizens. Both countries plan to expand the program to include all travelers. As a result, CBP has built a biographically based, low-cost solution to record departures by land on the Northern border.

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| <b>Question#:</b> | 16                                                           |
| <b>Topic:</b>     | VWP overstay 2                                               |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable Rob Portman                                    |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

**Question:** How many travelers from countries participating in the Visa Waiver Program or countries requiring visas have overstayed their time in the United States annually since 2011?

**Response:** Identifying nonimmigrant overstays is important for national security, public safety, and immigration benefits management, as well as for informing decisions about countries' eligibility to participate in the Visa Waiver Program (VWP). Nonimmigrants are admitted into the United States for specific, temporary purposes, and are classified as having overstayed if they fail to: depart prior to the expiration of the authorized period of admission; extend stay in the same status; change to a new nonimmigrant status; or adjust to lawful permanent residence.

Accurately and reliably estimating overstay rates has historically been a challenge because of the numerous records involved and the difficulties matching algorithms linking those records. The Department has not released overstay numbers previously due to concerns about the quality of the data that has been collected.

During the past two years, DHS has made tremendous progress in its ability to accurately report data on overstays—progress made possible by Congressional approval of realignments of Department resources in order to better centralize the overall mission in identifying and sanctioning overstays. The Entry/Exit Transformation Office was established within the Office of Field Operations at CBP in FY 2014, and included transferring oversight of the Arrival-Departure Information System (ADIS) to CBP. Additionally, CBP is in line to receive appropriations in FY 2015 to develop a reporting environment specifically for streamlining CBP's ability to provide overstay data.

That said, DHS believes the rate of overstays among nonimmigrants who enter the United States for business or pleasure under the VWP is quite low. VWP travelers are individuals who, because of their country's participation in the VWP, are not required to obtain a visa to enter the United States but must go through the Electronic System Travel Authorization (ESTA) in advance of departure, are subject to TSA (No Fly and Selectee List) screening as well as screening by U.S. Customs and Border Protection before they land in the United States, and once again upon entry into the United States. If CBP has concerns about the traveler's intent to overstay his or her period of admission, the CBP officer has the authority to deny the traveler admission.

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| <b>Question#:</b> | 17                                                           |
| <b>Topic:</b>     | preclearance operations                                      |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable Rob Portman                                    |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

**Question:** What criteria are considered in the decision to expand preclearance operations to a new country or airport?

**Response:** The primary factors for consideration in determining future preclearance locations are:

- Clear national security benefit to the United States;
- Likelihood of executing cost sharing agreement with respect to the new location;
- Presence of at least one U.S.-based air carrier operating at the location;
- Ability to safely support posting CBP personnel overseas;
- Ability of U.S. diplomatic missions to provide management support for CBP personnel;
- That the host country maintains practices and procedures with respect to asylum seekers and refugees in accordance with the Convention Relating to the Status of Refugees or the Protocol Relating to the Status of Refugees or that an alien in the country otherwise has recourse to avenues of protection from return to persecution; and
- Ability to meet TSA standards for aviation security screening for passengers and baggage.

**Question:** What countries and airports are currently being considered for expanding preclearance operations?

**Response:** In September 2014, CBP invited foreign airports to submit letters expressing their interest in preclearance operations and received responses from 25 locations in 15 different countries. CBP is happy to brief the status of these locations in the near future.

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| <b>Question#:</b> | 18                                                           |
| <b>Topic:</b>     | secure land borders                                          |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable Rob Portman                                    |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

**Question:** Does the Department of Homeland Security provide support to secure land borders in countries such as Turkey, Greece, and Bulgaria to reduce the flow of foreign fighters traveling to conflict zones such as Syria and Iraq? If so, what support is provided?

**Response:** Yes, DHS engages with partner nations including Bulgaria, Greece, and Turkey to provide support to secure land borders in order to better combat the threat to those countries as well as the Homeland posed by foreign fighters. DHS leverages its approach to and experience with modern border management to bolster partner nation border security by providing capacity building training, equipment recommendations, and lessons learned to enhance border situational awareness and effective interdiction. DHS recognizes that by bolstering countries' capabilities to secure their borders and better inhibit illicit travel, potential vulnerabilities to the Homeland are diminished. Further, deepening partnerships with countries similarly concerned with foreign fighters through supporting their border security can lead to additional cooperative opportunities such as information sharing regarding shared threats.

In March 2015, DHS concluded an agreement with Bulgaria to expand cooperation in this area and DHS would welcome the opportunity to brief your staff in person.

With Greece, DHS's interests are defined by its geographic position relative to terrorist travel, illegal migration, and illicit trafficking. DHS presence in country is led by an ICE Attaché, whose duties include supporting Greek efforts to enhance border security along both its overland and sea borders. In July 2014, DHS received a Greek border security delegation at the request of Greece's then-Prime Minister to show DHS border security best practices and how interagency coordination works. CBP, ICE, and USCG gave Hellenic Police and Coast Guard operational tours along the U.S. southwest border and maritime borders near Florida. The Greek officials were impressed with and sought to learn from DHS's experience integrating agencies' authorities to enhance operational collaboration for interdiction and investigative work. DHS is exploring further initiatives with Greek law enforcement counterparts to target smuggling and enhance border security along the Eastern Mediterranean and to build Greek capacity.

Turkey's geographic position—it has the longest land border with Syria and is considered the primary transit node from Europe to Iraqi and Syrian conflict zones—poses particular challenges with respect to securing land borders against foreign fighter travel. DHS is represented in country by a CBP Attaché, whose duties include deepening relationships

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| <b>Question#:</b> | 18                                                           |
| <b>Topic:</b>     | secure land borders                                          |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable Rob Portman                                    |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

with Turkish authorities to both enhance Turkish border security and establish collaboration against shared threats. At Turkey's request, over the last four years DHS has hosted several Turkish delegations to view DHS border training centers and operations along the U.S. southwest border to assist their development of similar techniques and approaches to better integrate personnel, equipment, and technology. Turkey has requested training for countering the use of fraudulent documents and cross-border financial investigations, and advice in the development of a K9 training program; DHS is exploring funding options with interagency partners to support these requests. Further, DHS, in coordination with U.S. interagency partners, is evaluating recommending additional technology solutions Turkish authorities could procure.

Working with countries known to be transit nodes for foreign fighters, DHS seeks to enhance those governments' efforts to detect and disrupt travel by terrorists and other *mala fide* travelers. These efforts are part of DHS's layered approach to border security to ensure the U.S. border is the last and not the first line of defense.

**Post-Hearing Questions for the Record  
Submitted to Mr. Mark Koumans and Ms. Maureen Dugan  
From Senator Ron Johnson**

**“Visa Waiver Program: Implications for U.S. National Security”  
March 12, 2015**

**Question:** What is the estimated cost of conducting the mandated biennial security assessment on VWP participating countries?

**Response:** By statute, DHS must conduct an evaluation of each Visa Waiver Program (VWP) country before granting initial designation in the program and at least once every two years after the country has been designated. Country evaluations typically take between six and nine months to complete. In most cases, these evaluations involve an in-country inspection led by the DHS VWP Office, with participation of technical experts from DHS operational Components and the support of other U.S. Government agencies, such as the Department of State, the Department of Justice, and the Intelligence Community. Each country assessment covers the following five areas: counterterrorism; border security; law enforcement capabilities and cooperation; immigration; and document security standards. When issues arise, DHS often exercises its discretion to conduct country assessments more frequently than once every two years. DHS conducts a minimum of 19 country assessments per year, excluding evaluations for initial designation in the VWP and any reviews that may be conducted more often than biennially. Personnel and travel expenses are not just incurred by DHS, but also by the Departments of State and Justice. Within DHS, costs are incurred by the Office of Policy (PLCY), Office of Intelligence and Analysis (I&A), CBP, ICE, and TSA. The potential expansion of the program to additional participants would increase the number of statutorily mandated assessments and hence the cost of running the program. Unlike other travel and immigration programs, currently the DHS VWP Office is not funded by user fees.

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| <b>Question#:</b> | 20                                                           |
| <b>Topic:</b>     | VWP overstay 3                                               |
| <b>Hearing:</b>   | Visa Waiver Program: Implications for U.S. National Security |
| <b>Primary:</b>   | The Honorable Ron Johnson                                    |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                   |

**Question:** Please provide the Committee a copy of the most current Visa Waiver Program overstay report, including rates by country and fiscal year.

**Response:** During the past two years, DHS has made tremendous progress in its ability to accurately report data on overstays—progress made possible by Congressional approval of realignments of Department resources in order to better centralize the overall mission in identifying and sanctioning overstays. The Entry/Exit Transformation Office was established within the Office of Field Operations at U.S. Customs and Border Protection (CBP) in FY14, and included transferring oversight of the Arrival-Departure Information System (ADIS) to CBP. The FY 2015 DHS Appropriations Act (Pub. L. No. 114-4) provided \$9.9 million to develop a new reporting environment for ADIS that will allow for greater flexibility in reporting entry/exit and overstay data.



**Questions for the Record Submitted to  
Deputy Assistant Secretary Edward Ramotowski by  
Senator Robert Portman (1)  
Senate Committee on Homeland Security  
March 12, 2015**

**Question:**

In response to an inquiry that I sent to FBI Director Comey in October 2014 expressing my concern for the foreign fighter threat, the FBI replied that "fighters flowing out of Syria and into Europe can enter the United States with lessened scrutiny because these are visa-waiver countries, creating a national security risk." Do you agree with the FBI that foreign fighters from countries participating in the Visa Waiver Program can enter the United States with lessened scrutiny?

**Answer:**

The Visa Waiver Program (VWP) is administered by DHS. Before a national of a VWP member state may travel to the United States without a visa, he or she must receive approval through the Electronic System for Travel Authorization (ESTA). Similar to the visa application process described below, this system screens against interagency databases for watchlisted individuals. If there is a positive match, the authorization is denied and the individual is barred from boarding U.S.-bound air or sea carriers, and advised to apply for a visa at a U.S. embassy or consulate. We respectfully refer you to DHS for additional details regarding its administration of the VWP and ESTA.

The State Department Bureau of Consular Affairs (CA) works with partners in the law enforcement and intelligence communities, using all available tools to address the threats posed by Foreign Terrorist Fighters (FTFs) and other Known or Suspected Terrorists (KSTs) who may wish to travel to the United States. In the past year, we have prudentially revoked 996 visas for possible terrorism-related activities. A small number of the holders of these revoked visas possibly could be described as FTFs; as this issue has emerged over the past several months an interagency partner specifically identified five recent revocation subjects as possible foreign terrorist fighters.

Like DHS and other U.S. government agencies, we use the existing watchlisting process to nominate KSTs, including those described as foreign fighters, to the Terrorist Identity Datamart Environment (TIDE, the U.S. government's database of terrorist identities), and to enhance existing KST records in TIDE with new biographic, biometric, and/or derogatory information. The National Counterterrorism Center (NCTC) processes the information for inclusion in TIDE. Recommendations for Watchlist (WL) status are forwarded to the Terrorist Screening Center (TSC), which makes the final WL determination for inclusion in its Terrorist Screening Database. These watchlisted identities constitute the U.S. government's terrorist identity holdings against which all visitors to the United States, including all ESTA and visa applicants, are screened.

Travelers are screened against numerous databases each time they travel. All visa applications undergo counterterrorism review, and our watchlisting partners constantly review inputs on foreign fighters. All visa applications are subject to Kingfisher Expansion (KFE), the U.S. government's standard process to conduct counterterrorism reviews of all visa applicants. KFE provides sophisticated, automated comparison of visa application data against U.S. government classified terrorist identity holdings, interagency counterterrorism reviews of all "red light" cases, and continuous vetting of all U.S. visa holders against new or evolving derogatory information in the U.S. government's classified terrorist identity holdings. In addition, in any case in which reasonable grounds exist, regardless of namecheck results, a consular officer may institute Security Advisory Opinion (SAO) procedures – a request submitted on the basis of policy or officers' discretion. SAO responses provide consular officers with the necessary information to adjudicate cases of visa applicants with possible terrorism or other security-related ineligibilities.

**Questions for the Record Submitted to  
Deputy Assistant Secretary Edward Ramotowski by  
Senator Robert Portman (2)  
Senate Committee on Homeland Security  
March 12, 2015**

**Question:**

What processes are in place for the United States and countries participating in the Visa Waiver Program to identify and track foreign fighters from Visa Waiver countries?

**Answer:**

The United States works with international partners to identify and track foreign fighters via a variety of programs to ensure that their border security systems in the air, marine, and land environments are adapting to meet the unique challenges posed by such a terrorist threat. One key mechanism is sharing information with our partners. The United States has information sharing agreements or similar arrangements with all Visa Waiver Program countries, which require the sharing of identity information about known or suspected terrorists and transnational criminals including foreign terrorist fighters. These agreements or arrangements not only improve our ability to detect foreign terrorist fighter travel but improve the capabilities of our foreign partners by making terrorist identities available for use in their own border screening systems. Moreover, the U.S. provides a wide variety of assistance, ranging from expert advice on how to screen inbound and outbound air travelers to training border security officials on how to identify foreign fighters.

**Questions for the Record Submitted to  
Deputy Assistant Secretary Edward Ramotowski by  
Senator Robert Portman (3)  
Senate Committee on Homeland Security  
March 12, 2015**

**Question 3:**

Do countries participating in the Visa Waiver Program take action to track and potentially detain individuals who are denied entry into the United States due to concerns that the travelers from those countries may be affiliated with violent extremist organizations?

**Answer:**

There is a wide range of mechanisms by which countries may track and detain known and suspected terrorists. Partners in the Visa Waiver Program take action to track and in some cases detain known and suspected foreign terrorist fighters, in accordance with their domestic legal frameworks and capacities. In recent years, many VWP countries have strengthened or are in the process of strengthening their legal authorities to address the foreign fighter threat. These have included but are not limited to: criminalization of additional terrorist-related activities such as traveling to join a terrorist group and terrorist training, guidelines on the revocation of passports, and authorities to share terrorist information and use that information to screen travelers.

**Questions for the Record Submitted to  
Deputy Assistant Secretary Edward Ramotowski by  
Senator Robert Portman (4)  
Senate Committee on Homeland Security  
March 12, 2015**

**Question:**

Do you believe the current visa refusal rate required by the Visa Waiver Program should remain at three percent or less? What consequences could result from raising the visa refusal rate required for the program?

**Answer:**

We support legislation providing authority to waive the current refusal rate threshold of less than three percent and allow countries with a refusal rate of up to ten percent to participate in the Visa Waiver Program (VWP). Raising the rate to ten percent would allow countries that are not current members of the VWP, such as European allies Poland and Croatia, to meet that particular statutory requirement for membership in the program. Further, as VWP members are subject to increased security evaluations and mandatory data sharing agreements, admitting more countries into to program would strengthen our ability to exchange a range of criminal and terrorist-related information.

**Questions for the Record Submitted to  
Deputy Assistant Secretary Edward Ramotowski by  
Senator Robert Portman (5)  
Senate Committee on Homeland Security  
March 12, 2015**

**Question:**

What is the value of requiring consular interviews for visa-applicants? Can improvements or alternatives to the consular interview provide for a greater security measure within the visa application process?

**Answer:**

We require personal interviews in most cases, including all applications that present possible threat indicators. An in-person interview adds significant value in first-time adjudications and other more complex cases where a consular officer's in-depth knowledge of local culture and norms is critical to evaluating an applicant's intent. While a consular interview can be invaluable in these cases, it is not always the best solution for every visa adjudication determination. For this reason, the Department of State has requested greater authority to use this tool more selectively. Interview waivers for certain applicant groups allow consular officers to more effectively allocate their time and resources to evaluating higher-risk visa applicants, thereby enhancing national security. In addition, enabling some applicants to forego a time-consuming and potentially costly trip to an embassy or consulate facilitates increased business and tourist travel to the United States.

All visa adjudications, regardless of whether they are made pursuant to a personal interview, are subject the same rigorous security screening. The visa adjudication regimen employs analytic interview techniques and incorporates multiple biographic and biometric checks, all supported by a sophisticated global information technology network. CA works with our interagency partners to screen every person who seeks a visa for terrorism concerns. Our screening system utilizes both biographic and biometric data, and is not region or nationality dependent. We constantly refine and update our visa application and screening processes while encouraging and facilitating legitimate travel.

**Questions for the Record Submitted to  
Deputy Assistant Secretary Edward Ramotowski by  
Senator Robert Portman (6)  
Senate Committee on Homeland Security  
March 12, 2015**

**Question:**

How can the United States encourage and support the European Union and its member states as they work to build a more robust information sharing system, including the expansion of Passenger Name Record (PNR) sharing? What steps is the State Department taking in support of this effort?

**Answer:**

The State Department – together with interagency partners – regularly raises with European partners the importance of information sharing and traveler screening mechanisms, including the potential to institute an EU-wide Passenger Name Record (PNR). These discussions have occurred at all levels among European Union officials as well as with those from EU Member States. Such diplomatic messaging emphasizes how much security value PNR has had for the United States since 2001, and how the United States recognizes the need to maintain the balance between security and privacy. We also highlight that an EU-wide PNR system is likely to be more effective than a patchwork of national PNR systems in individual member states, as well as how we use PNR domestically to strengthen our own security.

**Post-Hearing Questions for the Record  
Submitted to Mr. Edward Ramotowski  
From Senator Thomas R. Carper  
"Visa Waiver Program: Implications for U.S. National Security"  
March 12, 2015**

**Question:**

If the United States government had the capacity to collect authentic biometrics (such as fingerprints and photos) from travelers as part of the Electronic System for Travel Authorization (ESTA) application process, would that be a net benefit to our counter terrorism system? What obstacles would the federal government face in setting up biometric collection in the ESTA process?

**Answer:**

Biometrics are particularly useful in "resolving" identities when biographic information screening delivers results. Because names are not unique (there are many "Tom Smiths"), a traveler could be flagged by a check against a U.S. government database when he/she applies for an ESTA without in fact being a person of concern. In such cases, the ESTA system properly requires that the traveler be subjected to the regular visa process, during which biometrics are collected and more detailed screening is done in order to resolve the original "flag." Biometrics are also useful in identifying individuals who are using false identities. Under current practice, U.S. Customs and Border Protection (CBP) directs any VWP traveler about whom it has security concerns to a U.S. consulate for further review, including biometric screening. This process works well.

By requiring that all ESTA applicants visit U.S. consulates for biometric enrollment, the Visa Waiver process would essentially mirror the regular visa process, which could affect other security agreements with VWP partners. This additional burden would effectively nullify the VWP by forcing travelers to go through the entire visa application process except for the interview, would disrupt the essential data sharing agreements we have with our VWP partners, and would deter some of the 20 million VWP travelers who visit the United States each year and contribute billions of dollars to our economy.

While we are not aware of any study looking at the full cost of trying to capture biometrics from all ESTA participants, we note that in order to ensure the validity of the biometrics, the requisite fingerprints and photos would most likely have to be taken by a U.S. government employee. Outside the United States, the most likely facilities to have the necessary employees and equipment would be U.S. consulates. This would incur the expense of substantial staffing increases, as well as facility upgrades to screen and manage the many ESTA applicants who need biometrics collected each year. It is also possible that other countries would impose similar requirements on U.S. citizen travelers as a matter of reciprocity, thereby increasing the costs and time of their travel. Finally, it should be noted that CBP already collects biometrics from VWP travelers upon arrival in the United States as part of the admissions process.



## **SECURING THE SOUTHWEST BORDER: PERSPECTIVES FROM BEYOND THE BELTWAY**

**TUESDAY, MARCH 17, 2015**

U.S. SENATE,  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:02 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, McCain, Lankford, Ayotte, Ernst, Sasse, Carper, McCaskill, Heitkamp, Booker, and Peters.

### **OPENING STATEMENT OF CHAIRMAN JOHNSON**

Chairman JOHNSON. I do know that our Ranking Member is going to be a little late, so he said we could start without him, and so we will call this hearing to order.

Let me first start out by saying this is—well, first of all, let me welcome everybody here. Thank you for your thoughtful testimony. I have read it all. It was very well prepared.

This is going to be the first in a series of hearings and, hopefully, public roundtables really designed to lay out the reality of the situation. Exactly what are we dealing with in terms of trying to secure this border?

One thing that is pretty noteworthy about four of the five written statements, four of you made a very prominent point that the border is not secure, and I agree with that assessment. I think you also laid out in your testimony what is also obvious, that this is a very complex problem. There are no easy solutions to this whatsoever because we have a number of factors here. We have the nexus between the drug trafficking and drug cartels, and the human traffickers and the drug cartels, and illegal immigration, and immigration law that incentivizes illegal immigration.

So, this is an incredibly complex problem, and that is what these hearings, these forums, or these roundtables are going to be designed to achieve, is lay out that reality, provide the kind of information policymakers need to solve any problem. And, of course, that is one of the problems with border security and immigration reform, is it is lacking the information.

I have a written statement that I just want to include in the record,<sup>1</sup> without objection, but I just want to read a couple little

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<sup>1</sup>The prepared statement of Chairman Johnson appears in the Appendix on page 351.

clips from this, because the problem is exacerbated by a lack of information.

We do not know for sure how many people today are living in the shadows. And, most importantly, there is no solid way to track illegal flow at our borders. And, how many people here today entered this country lawfully but overstayed the visas? We really do not know.

How many people cross the U.S.-Mexico border undetected? We really do not know. Out of those detected, how many were apprehended? We really do not know. Out of those detected and apprehended, how many were let go with just a Notice to Appear? I do not know it. We should have the information on that, but it has not been supplied to this Committee.

Out of those that received a Notice to Appear, how many showed up for their court date? Again, we should have that information, but I do not have it. I do not believe this Committee has it. And, out of those that showed up for their court date, how many were actually deported?

So, if we are going to start working toward solutions, if we are going to start analyzing this problem, we need a whole lot more information than we currently have.

And, the fact is, we passed a lot of legislation, and I just want to go down a list that is also in my written statement, but let me just quick lay it out here.

In 1986, we passed the Immigration Reform and Control Act (IRCA). At the time, the estimate was there were slightly less than four million immigrants that were in this country illegally. Of course, what happened there, that was the amnesty bill that was supposed to solve the illegal immigration problem for all time.

In 1990, we passed the Immigration Act of 1990, increased the number of Border Patrol Agents by 1,000, created an H-1 Visa for high-skilled workers. At that point in time, we had about 3.5 million people, supposedly, here in this country illegally.

In 1996, we passed the Illegal Immigrant Reform and Immigration Responsibility Act (IIRAIRA). It created a pilot program for e-Verify and increased Border Patrol Agents by 5,000, and it was the first time we required the creation of an exit-entry system. By this point in time—again, remember, we passed the amnesty bill in 1986. Ten years later, now we had six million people in this country illegally.

In 2001, after 9/11, we passed the PATRIOT Act. It also required an entry-exit system that was going to be biometric and it tripled the number of Border Agents on the Northern Border. In 2001, we had estimated about 9.6 million immigrants in this country illegally.

In 2002, we passed the Enhanced Border Security and Visa Entry Reform Act. It once again called for a biometric exit and entry system at all ports of entry. Now, the number of people in this country illegally had risen over 10 million.

In 2004, we passed the Intelligence Reform and Terrorism Prevention Act. It increased Border Patrol Agents by a total of 10,000 and it called on the Department of Homeland Security (DHS) to complete once again, the biometric entry and exit system. The entry system had been completed by 2004. We still do not have an

exit system now. The number of people in this country illegally was almost 11 million.

In 2006, we passed the Secure Fence Act, calling for the construction of 850 miles of fence along the Southwest Border. In 2006, the number of people in this country illegally was about 11.7 million.

Now, one interesting thing about the Secure Fence Act is I have been diving into this problem. I am trying to get as much information as possible, and I did ask my staff, because I wanted to really understand this, so I asked them to print out the Secure Fence Act so I could really study it over the weekend, a piece of legislation that is pretty hard to comprehend, so I really wanted to spend the weekend reading this, what I consider was going to be a pretty complex, pretty thick bill. It took me a couple of minutes because it is two pages long.

In 2007, after the 9/11 Commission Recommendations Act, once again, reiterated the need for a biometric exit system. Now, we had almost 12 million people in this country illegally.

The point of that iteration, that time line, is we have been passing law after law after law, and at some point in time we have to ask the question, do these laws work? Are we solving the problem? And if not, why not?

So, again, the purpose of this hearing is to lay out the reality, lay out the facts, understand the complexity, realize there is no silver bullet solution, there is no easy solution to this problem. And, again, that is why I want to thank the witnesses for some thoughtful testimony. This is the first step. I think, having read your testimony, you are certainly laying out some realities that we certainly need to consider here in Congress.

And with that, I will turn it over to our Ranking Member, Senator Carper.

#### **OPENING STATEMENT OF SENATOR CARPER**

Senator CARPER. Thanks, Mr. Chairman.

Welcome, one and all. It is good to see you. Thank you for spending this time with us today.

Last month, our Chairman, along with Senator Sasse and I traveled down to South Texas to see firsthand conditions along our border. We met with ranchers. We met with Border Patrol Agents, officers in action at the port of entry (POE), we learned a lot, and I am pleased to say that today, some of our friends from the Southwest Border have joined us here in our Nation's capital to continue the conversation that was begun down there.

I have made a number of trips over the years to both our Northern and our Southern Borders, from the West Coast, the Pacific, all the way over to the Gulf Coast, and along the Northern Border, as well. Thank you, Senator Heitkamp. [Laughter.]

Each time, I came away impressed both by the dedication of our border security personnel and by the security and technological advances we have made. We have invested a huge amount of resources along our Southern Border, in particular, as you know, a quarter of a trillion dollars over the past decade. I do not believe it has been wasted. I think it shows.

In fact, last Congress, we held a series of border security hearings in this Committee. We learned that overall apprehensions of undocumented migrants are at a 40-year low. We learned that crime rates in many communities near the border have also dropped significantly. We also had experts tell us that the border is more secure than it has ever been, and many of those I have spoken to during our trip have agreed—not all, but many.

Having said that, is there more work to do? You bet, there is, and one of the great things about this hearing is you can help us better focus our attention on what is likely to work and enable us to continue to make progress.

We know that while many border communities are among the safest towns in America, the drug cartels are a real danger and are growing more sophisticated and oftentimes more violent, as well. Ranchers, in particular, face persistent and daunting challenges on their own lands. We also know that our ports of entry need to be modernized. These border crossings have received far less attention and resources than the Border Patrol over the past decade, but they are just as important to our security and to our economy. And, of course, we are all aware that the Rio Grande Valley last summer faced an overwhelming surge of Central American children and families arriving at the border.

While some of these migrants tried to evade our agents, it is my understanding that most simply turned themselves in, and based on what I have seen and heard, I am convinced that we need to take at least three basic steps.

First, we need to continue to make investments at the border, but they need to be smart investments. To me, that primarily means innovative technologies that can serve as force multipliers for the unprecedented number of agents we have stationed along the border. In fact, when Chairman Johnson, Senator Sasse, and I were down on the border, we heard repeatedly that, and this is a quote, “Technology is the key to securing the border.”

Of course, what works in Arizona may not work in Texas, may not work in San Diego, or may not work along the Northern Border. In some areas, unmanned aerial systems (UAS) with advanced radar technology or fixed-wing aircraft with sophisticated cameras may be what is most effective. In other places, it can mean surveillance systems on tethered aerostats or mobile towers or fixed towers. In others, it could be taming a wild mustang that allows an agent to patrol remote or densely vegetated areas along the Rio Grande River and do that more effectively.

We also need to enable our ports of entry to work more efficiently. We need to enable our ports of entry to work more efficiently so that we can better focus our inspections on potential threats rather than legitimate travelers.

But as we make these investments to support our frontline agents, we must avoid the temptation here in Washington of being overly prescriptive. As smart as we are, we do not have all the answers, and a lot of the good answers, frankly, are at this table, and the other people we have met with on these repeated trips to the border.

The second thing we need to do is to get to work on comprehensive immigration reform. This cannot and should not wait until we

have achieved some elusive, perfect measure of border security. Congress needs to begin real debate on a comprehensive and thoughtful 21st Century immigration policy for our Nation, a policy that is fair, that will significantly reduce the Nation's budget deficit, that will continue to slow the flow of immigrants to our border with Mexico, and it will strengthen the economic recovery now underway.

Last Congress, two-thirds of the Senate came together and overwhelmingly passed such a measure. Was it perfect? No, but it took significant steps to fix our badly broken immigration system while reducing our deficit by nearly \$1 trillion over the next 20 years and increasing our gross domestic product (GDP) over that time period by 5 percent. And, by creating better legal channels for immigrants to come to our Nation, we make it easier for border security officials to focus on the people or things that pose a true risk to us. Letting millions of undocumented people already living here, many for their entire lives, to step out of the shadows and undergo background checks is also good for local law enforcement. In short, comprehensive immigration reform is good for security.

Third point: We must address the root causes of the challenges we face along our borders with Mexico and not just the symptoms. I just want to take a moment, Mr. Buffett, to thank you and your family, your Foundation, for knowing that and actually doing something about it. You are a model for us.

But, in this case, this means helping to address the violence and desperation that has caused so many families, children, and others to risk their life and limb on a 1,500-mile journey across Mexico to come to our country. The leaders of Guatemala, Honduras, and El Salvador have embarked on an unprecedented collaboration effort called the Alliance for Prosperity to boost security and prosperity within their region. They have committed to investing their own money in the development of their infrastructure and workforce and to make difficult changes to promote transparency, security, and the rule of law. We should be a good neighbor and support them in this effort, just as we helped Colombia reverse its downward spiral with Plan Colombia in the 1990s. It is the right thing to do and the pragmatic thing to do. It is a much better approach than continuing to deal with the devastating and costly consequences of vulnerable children and others making the trip to our border.

Finally, I was pleased to see the President's request of \$1 billion in next year's budget to partner with the governments of Central America as they seek to address security, governance, and economic challenges. For example, some of this funding would support better police training or the expansion of youth centers for those at risk of gang violence and recruitment. Some of it will be used to attract foreign investment or support efforts to build a stronger court system and electric grid.

Changes in these nations will not happen overnight. It will not be easy. But, I believe we have a moral and fiscal obligation to help our neighbors in the Northern Triangle. After all and we do not say this enough, but I want to say this—after all, addiction in the United States to cocaine, to heroin, and other illegal substances di-

rectly contributes to their misery in those countries. But, if we work together, progress can be made. They can do it. We can help.

With that, I look forward, Mr. Chairman, to hearing from all of the witnesses. Thank you one and all.

Chairman JOHNSON. Thank you, Senator Carper.

It is the tradition of this Committee to swear in witnesses, so if you will all stand and raise your right hand.

Do you swear the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. CABRERA. I do.

Mr. DANIELS. I do.

Mr. BUFFETT. I do.

Mr. BRAND. I do.

Ms. WEISBERG-STEWART. I do.

Chairman JOHNSON. Thank you.

Our first witness is Chris Cabrera. Chris is a Border Patrol Agent and serves as the Vice President and spokesperson of the National Border Patrol Council (NBPC), Local 3307. Local 3307 represents more than 2,000 Border Patrol Agents and support staff in the Rio Grande Valley in South Texas. Before joining the Border Patrol, Mr. Cabrera was a paratrooper with the United States Army. He joined the Border Patrol in 2003 and has spent his entire career in the Rio Grande Valley, stationed in McAllen, Texas.

Mr. Cabrera.

**TESTIMONY OF CHRIS CABRERA,<sup>1</sup> BORDER PATROL AGENT,  
RIO GRANDE VALLEY SECTOR, U.S. CUSTOMS AND BORDER  
PROTECTION, ON BEHALF OF THE NATIONAL BORDER PA-  
TROL COUNCIL**

Mr. CABRERA. Chairman Johnson, Ranking Member Carper, thank you for providing me with the opportunity to testify on behalf of the National Border Patrol Council and the 16,500 Border Patrol Agents it represents. My name is Chris Cabrera. I joined the Border Patrol in 2003. I served 4 years with the U.S. Army as a paratrooper. I have spent my entire Border Patrol career in the Rio Grande Valley of South Texas.

Before I discuss some potential solutions that can be employed to increase border security, I want to address whether or not the border is secure. If you ask that question of the Department of Homeland Security or senior management at Customs and Border Protection (CBP), they will tell you that the border is secure. They may even point to statistics and metrics showing that the Border Patrol is 75 percent effective in apprehending illegal immigrants and drug smugglers.

I want to be crystal clear. The border is not secure. That is not just my opinion or the position of the NBPC. Ask any line agent in the field and he or she will tell you that the best we apprehend is 30 to 40 percent of the illegal immigrants attempting to cross into the United States. This number is even lower for drug smugglers, who are much more adept at eluding capture.

<sup>1</sup> The prepared statement of Mr. Cabrera appears in the Appendix on page 355.

Now, how can this enormous gap exist between what DHS tells you here in Washington and what our agents know to be the truth in the field? Frankly, it is how you manipulate the statistics. Let me give you an example. A key metric in determining the effectiveness is what is known as “got aways.” If we know from footprints or video surveillance that 20 individuals crossed the border, we ultimately catch 10, obviously, we know that we have 10 that got away.

Now, when I first joined the Border Patrol, if I saw 20 sets of footprints in the sand, there was no argument. We were looking for 20 individuals. Today, if I see 20 more footprints in the sand, a supervisor must come out to my location and verify the number of footprints. I guess they believe that I have lost my ability to count after 13 years. Agents who repeatedly report groups of larger than 20 face retribution. Management will either take them out of the field and assign them to processing detainees at the station or assigning them to a fixed position in low-volume areas as a punishment. Needless to say, the agents have gotten the message and now they stay below the 20-person threshold, no matter the actual size of the group.

In January 2011, Border Patrol Chief Fisher came to our muster at McAllen Station. To his credit, he took questions from the assembled agents. I expressed my concern to him what I perceived to be CBP being more interested in border security statistics than the actual border security, especially as it pertains to our “got aways.” Chief Fisher’s response was, “If a tree falls in the woods and no one is there to hear it, does it make a sound?” Now, I do not know if that tree makes a sound, but I do know if I see 20 footprints in the sand and I catch five, that I have 15 “got aways,” whether or not our official statistics reflect that.

I raise this issue with you because before we can start to address our problems, we have to acknowledge the extent of them. In a moment, I am going to ask you to provide our agents with more resources. I know that times are tough right now and everyone is asking for more resources. I know that it is harder to sell for me when the head of my agency is telling you that we are 75 percent effective and the border is secure.

To give you a sense of what we are dealing with, not 6 months after Chief Fisher made that comment to me, I was involved in a firefight with drug cartel smugglers. We were attempting to intercept a drug shipment and we sustained automatic gunfire from the Mexican side of the Rio Grande River. In less than 5 minutes, over 600 rounds were fired. When cartel members are brazenly firing automatic weapons at Federal law enforcement agents, the border is not secure. This was in 2011, and since then, things have gotten worse in the Rio Grande Valley Sector.

What are some actions that this Committee can take to improve border security? Let me give you several of my suggestions.

Increase manpower. Currently, there are 21,370 Border Patrol Agents in this country. We do not need to double the size of the Border Patrol to gain operational control. In my opinion, we fall approximately 5,000 agents short of where we should be. The NBPC would advocate that 1,500 be sent to the Northern Border, which

is woefully understaffed, and the remaining 3,500 positions allocated to interior enforcement.

Supervising staffing levels. The Border Patrol is an extremely top-heavy organization with far too many layers of management. The average police department has one supervisor for every 10 officers. The Border Patrol has one supervisor for every four agents. This Committee should mandate a 10:1 ratio and achieve it through attrition in the supervisory ranks. That could easily return another 1,500 agents to the field.

Interior enforcement. Every night, we effectively play goal line defense because all of our resources and assets are concentrated right at the border instead of having an in-depth defense. You may be surprised to learn that even in a border State like Arizona, we have no agents in Phoenix, this despite the fact that Phoenix is one of the most important illegal immigrant and narcotic transit points in the country.

Better training. During the Bush Administration, the Border Patrol's academy training was reduced from approximately 20 weeks to as little as 54 days if you spoke the Spanish language. This is simply not enough time to properly train an agent and weed out those who are not up to the challenge. The Committee should require that the academy revert back to the 20 weeks.

Again, I would like to thank the Committee for the opportunity to testify, and if you have any questions, I would be happy to answer them to the best of my ability.

Chairman JOHNSON. Thank you, Mr. Cabrera.

Our next witness is Sheriff Mark Dannels. He is the Sheriff of Cochise County, Arizona. Mr. Dannels began his law enforcement career in 1984, after serving a successful tour in the United States Army. With 30 years of law enforcement experience, Mr. Dannels has been recognized, among other things, to receive the Medal of Valor, Sheriff's Medal, and the Deputy of the Year.

Sheriff Dannels.

#### **TESTIMONY OF MARK J. DANNELS,<sup>1</sup> SHERIFF, COCHISE COUNTY, ARIZONA**

Mr. DANNELS. Chairman Johnson, Ranking Member Carper, and Members of the Committee, thank you and good morning, for the distinct privilege and honor to actually share my experience over three decades on the border and seeing how it has evolved.

My brief statement has been submitted, but I would like to highlight a few points.

With 83 miles of international border within our jurisdiction, Cochise County plays a significant role in combating drug and human trafficking organizations and associated violent crime, which adversely affects Arizona residents and other areas throughout the United States. With 6,219 square miles, Cochise County is the 38th largest land mass county in the United States and is home to United States Army base, Fort Huachuca. Violence against innocent citizens, public officials, law enforcement, and rival drug and human trafficking groups in Mexico continues to escalate. The adverse effects of the drug and human trafficking organizations op-

<sup>1</sup> The prepared statement of Mr. Dannels appears in the Appendix on page 358.



erating in Cochise County not only definitely diminish the quality of life of county residents, but also places unbearable strain upon the budgets and resources of private and local government agencies in the county.

In the 1990s—I would like to talk just quickly about the history of the border and why we are in the current situation. I call it the Plan of the Ps, where the Federal Government came out with a plan to secure the border, where they were going to secure the populated areas, which the targeted cities were Yuma, El Paso, and San Diego, and the ports of entry. The other half of the plan was to reroute that illegal activity, those disturbances, into the rural parts of the Southwest Border. I am now proud to say that today we are a product of the Federal Government's plan.

Currently, we have 1,500 Federal agents working just in Cochise County for 83 miles of international border. Local solutions and programs are no longer a thought, but a reality of bringing relief to our citizens. As the Sheriff of Cochise County, I felt it was my elected and statutory duty, which is my oath of office, to support the United States Constitution and the Arizona Constitution to protect and secure the freedoms and liberties of my citizens, with or without the help of our Federal partners and policymakers. It is no longer a debate that those that live in the rural parts of the Southwest Border are not secure and are vulnerable for any type of transnational criminal activity.

Some of the local solutions that we have put forward: A balanced community policing effort, both education, prevention, and enforcement. We spent transparent time to build that community trust. We have collaborated at all three levels of law enforcement and government within our county. Our local county attorney and I have a law and order partnership to put the consequences back into those that commit crimes against our citizens, to include border crimes. Interoperabilities and intelligence sharing at all three levels.

A regional Border Team: To give you an example of this Border Team, which is supported by Border Patrol, Customs, and the U.S. Forest Service, the first 6 to 8 weeks, we put 30 smugglers that we captured, put them in prison at the State level, where they are now being housed there for an estimated 2-year sentence.

A Ranch Advisory Team: Made up of our local ranchers and farmers and citizens that are vulnerable in these areas. A Ranch Patrol of two deputies that now work directly with these citizens. A factual situation awareness for our media, our elected officials, and America as a whole. And, a community outreach to work within our communities.

Some recommendations—I highlighted a few of them: To redefine the Plan of the 1990s and build upon their successes. The political will to make border security a mandated program, not a discretionary one. Border security first, immigration reform second. Maximize the allocated resources of staffing with the Border Patrol. Currently, in the Tucson Sector, only 43 percent of all Border Patrol were actually on the border. Support and embrace first-line agents that work the border regions. They have a dangerous job and it is no secret their frustration is high. Quality of life. Citizens living on the border are supported by sheriffs and State Governors

regarding an improved security and safety. Funding supplement for local law enforcement, prosecution, detention, and criminal justice, and in support of border crimes. Continue funding and support for the Stonegarden program, which has actually been a very beneficial program. And, enhanced funding for regional communication and interoperability with local law enforcement.

I want to read a letter—this is from the Arizona Sheriffs Association—that we sent to Washington, DC. on July 28 of 2014. I actually authored this letter. “This letter is authored by the Arizona Sheriffs Association to address the lack of border security on the part of our Federal Government, thereby placing our Arizona citizens and all those that visit our beautiful State in harm’s way by those that have chosen to infringe upon and violate our freedoms and liberties that are guaranteed under the U.S. Constitution.

“Arizona Sheriffs are standing united and steadfast in support of secure and safe borders in hopes of enhancing public safety for our Arizona citizens and all Americans. A secure and safe border is one that provides a genuine deterrent for those that cross into our country illegally and for illicit gain.

“Border security must never be a discretionary program, but a mandate by our Federal leaders and policymakers. The quality of life normally enjoyed by our citizens has been jeopardized by an unsecure border that enables transnational criminals and their accomplices to prey upon our citizens. Our focus is border security. It is not to be confused with immigration reform.”

Today, the opportunity to address this group instills fresh hope that our voice does matter, and on behalf of the citizens of Cochise County, Arizona and beyond, we hope you will not forget us and will do your constitutional mandate to bring positive change to an overdue, vulnerable situation.

I leave you with an open invitation to come visit us in Cochise County, for not a show-and-tell visit, but a real life visit. And, Senator Johnson, thank you for bringing your staff down to see firsthand what is going on on our border.

Again, thank you very much for the opportunity to share this experience and I am open for any questions if you wish. Thank you.

Chairman JOHNSON. Thank you, Sheriff Dannels.

Our next witness is Howard Buffett. Mr. Buffett manages the Howard G. Buffett Foundation, a private charitable foundation. He is a member of the Sheriff’s Assist Team in Cochise County, Arizona. Mr. Buffett oversees a 2,376-acre cattle ranch in Arizona on the U.S.-Mexico border and another farm in Arizona 50 miles from the border. Mr. Buffett has been honored for his charitable work, receiving the Aztec Eagle Award from the President of Mexico in 2000, the highest honor bestowed on a foreign citizen by that government, and Mr. Buffett, we all do appreciate your generosity to these causes.

Mr. Buffett.

**TESTIMONY OF HOWARD G. BUFFETT,<sup>1</sup> CHAIRMAN AND CHIEF  
EXECUTIVE OFFICER, HOWARD G. BUFFETT FOUNDATION,  
AND ARIZONA LANDOWNER**

Mr. BUFFETT. Thank you very much, Chairman Johnson and Ranking Member Carper and the Members of the Committee. I appreciate having the opportunity to be here today.

I am here as a landowner of border property, a philanthropist who has worked on related humanitarian issues over the last 20 years, and a member of law enforcement in both Arizona and Illinois. These experiences inform the perspective I share here today.

You have already heard that the border is not secure by your first two witnesses and I would support that position. I believe we must secure our border now, regardless of efforts being considered on immigration reform and support to countries of origin. I would be happy to share my thoughts at a later time on those topics, given our Foundation efforts on both. But, I will say that I see them both as separate and distinct from the need to secure our border.

Our insecure border creates a serious humanitarian crisis. By failing to secure our border, we have contributed to failing economies and unsafe environments, causing people to die attempting to reach our country, while putting our own citizens at risk. Our insecure border allows the drug cartels to operate at an unacceptable level, having a devastating impact on heroin and meth use in this country. U.S. citizens who own land in border States suffer economically. Those who live in communities along our border assume a higher risk to their personal safety that can be frightening and, at times, deadly, and all of this adds up to undermining our society.

Border security is like most law enforcement objectives: It will never be 100 percent successful, but we must strive for zero tolerance. Today, we are far from that standard. This is reflected in the fact that as a landowner along the border, we cannot build a home on our property, we cannot let our children play freely, and we cannot reliably operate our businesses. This is not what we expect as citizens of the United States.

I have neighbors in Arizona who have had to abandon their livelihoods of breeding cattle. On our property, we struggle to keep up repairing fences which are cut multiple times regularly by drug smugglers who have too heavy a load to go over or under these fences.

We must also recognize that our insecure border causes people attempting to cross to die trying, children to be victimized, women to be raped, and contributes to the dysfunction of the neighboring economies that these people are fleeing. We should strive to help our neighbors improve the rule of law and to provide opportunities so people can stay at home without looking to the United States as a safe haven. And, our actions at home should not encourage people to travel to our country illegally. None of that is possible unless our border is secure.

Those who decide to come to this country represent two different groups. Many are desperate, but decent people who are law-abiding

<sup>1</sup> The prepared statement of Mr. Buffett appears in the Appendix on page 364.

individuals until they cross our border illegally. Others are human predators, thugs, or members of organized criminal groups.

As a part-time law enforcement officer, as a property owner of a ranch located on our Southern Border and a farm 50 miles north of that border, I have experienced many encounters with Border Patrol Agents and illegal immigrants. When you live or operate close to the border, it is like living in another world.

As a result of our Foundation, I have spent hundreds of hours with families in Central America and Mexico. I have interviewed people boarding the death train in Oaxaca, those who were seriously injured in the process, and mothers whose sons have died in the Arizona desert. So, I repeat, our insecure border creates a humanitarian crisis.

One thing I have learned from our Foundation work in over 80 countries is that it does little to identify a problem if you are not able to also propose a solution. So, I present a few ideas for your consideration.

One, we need more human assets on our border, but adding more Border Patrol Agents is not the only answer. We have an opportunity to engage appropriate military assets, and I emphasize, without militarizing the border. The Coast Guard is an agency which falls under Homeland Security, and is well trained to deal with border enforcement. I would strongly consider expanding its mandate to operate on land. The National Guard can be used to monitor additional technology, such as aerostats and other surveillance systems, which will add to the support in the technology area.

Two, we need a commitment from Mexico and with Mexico to enforce the Northern and Southern Borders. We need to put the manpower of both countries on both sides of our border with Mexico to shut down the drugs coming into our country. We should apply the lessons we learned from our engagement with Colombia to try and reduce the drug trade, improve security, and promote rule of law for our Southern neighbor. This requires a new level of trust and investment, and I would emphasize, it is not without risk.

Three, we need additional immigration courts at border facilities for real time judicial processing until our border is more secure.

Four, we must improve cooperation on the border among ranchers, local law enforcement, and community leaders. It is the responsibility of the Federal Government to set this tone and to foster this cooperation. Too often, the Federal Government acts like the Federal Government.

I have included in my written testimony more details of my experiences and our Foundation investments across a broad range of related activities, from gang prevention in El Salvador to geographic information systems (GIS) for body recovery at the Pima County Medical Examiner's Office, from projects with the United Farm Workers and Costco supporting farm labor rights and work programs, to millions of dollars that we have invested in the Cochise County Sheriff's Office (CCSO) for public safety, and in particular to fight human trafficking and drug smuggling.

I look forward to answering any questions. Thank you.

Chairman JOHNSON. Thank you, Mr. Buffett.

Our next witness is Othal Brand. Mr. Brand has lived for over 60 years in McAllen, Texas, and currently serves as the President and General Manager of Hidalgo County Water Improvement District Number Three, with its main facility located on the embankment of the Rio Grande River. For 30 years, Mr. Brand worked for his family business with farming operations and property directly on the Rio Grande River.

Mr. Brand.

**TESTIMONY OF OTHAL E. BRAND, JR.,<sup>1</sup> FARMER, MCALLEN, TEXAS**

Mr. BRAND. Thank you. Chairman Johnson, Ranking Member Carper, and Members of the Committee, I appreciate your invitation.

My name is Othal Brand. I have lived in the Valley, as you said, for 60 years. My family farmed the Valley. We were the largest growers of fruits and vegetables in the State of Texas for a quarter of a century and farmed thousands of acres owned and leased along the river for that time. I now served 10 years as the General Manager and President of our Water District, working every year and speaking on a weekly basis with law enforcement, being on the embankment, dealing with all the issues that you have heard of and know about today.

I hope you read my written testimony. There is violence and a criminal element is real on the river. If you have listened the last couple days to the news, our Sheriff for Hidalgo County just released, or the first time I have heard it, that 53 percent of all illegal crossers in the United States came through Hidalgo County, where we live—53 percent of everyone nationwide. I would say the focus is rather pointed.

I want to spend most of my time with you this morning speaking to the possible solutions and, hopefully, if there is time, speak to the other.

In dealing with where we live—that is all I am going to go into, try to tell you that my experience is—one is you have aerostats, you have drones, you have planes, you have helicopters, and they are great and they have been a great asset, but they are what we call fair weather systems. Aerostats can only stay up—we are called the Windy Valley. There is a reason for that, because we have a lot of wind. Aerostats can only stay up for a certain wind speed and then they have to come down. Drones on a cloud-covered day, are absolutely on the ground and have no worth to us. You have already started and I hope to encourage you to continue the added support of portable towers, which are more of a terrestrial structure, that are more of a 24/7 solution to—in addition to what you are presently doing.

No. 2, boat ramps, or boat access. In listening to Border Patrol, I buy into what they say about the first line of defense for us is the river. We actually have a river. We are not like other parts of the State where it is just a dry gully, and that is the first line of defense. And, what we know is that if there are boats in the water, that is a deterrent. It is the most vulnerable. People who cross into

<sup>1</sup> The prepared statement of Mr. Brand appears in the Appendix on page 394.

our part of the world, that is where they are the most vulnerable. It is first, getting in that water and getting out. Boats are a solution to that. They should be the first line of defense.

In 250 miles of our river, from Brownsville to Rio Grande City, we have two 24/7 ramps and neither one of them belong to the government. One of them is ours, which is below Anzalduas Dam. The other one is above. There are eight weirs in the Rio Grande, dams that actually segment the river into pieces. They need access to that river. They need infrastructure. You have infrastructure for the air. You have infrastructure for the ground in the boots. You do not have any infrastructure for the boats, for the marine division.

I have suggested, if you read that the Water Districts who serve 90 percent of the people in the Valley are below the walls that were built in the Valley, but they provide the majority of the drinking water. They are the only other people on the river—other than your international bridges—they are the only other ones that have infrastructure all the way to the river.

Border Patrol says that their issues are environmental studies that take 3 to 5 years and all their answers have been “no” to this point. In regard to Water Districts, the majority of them have channels, anywhere from a quarter to a half-a-mile long, off the river. This is what we have done. We did not have to do any environmental studies. We built the ramp inside our property, on our channel that accessed the river, never touching the embankment, never touching the river.

These are simple, quick solutions. These Water Districts are more than open to a possible solution for Border Patrol in this respect.

These weirs, at the same time, are important because there has to be a certain water level for boats to work. These weirs, we are getting ready to spend \$125,000 to \$150,000 to lift the weir below our pump station in order to make our pump station more efficient and have water supplies. This is what they were all built for, for the Water Districts, in the first place. By raising these weirs a foot to even just two feet, it gives the Border Patrol Marine Division an opportunity to keep a water level that is adequate for them to operate fully from one end of the Valley to the other, where 53 percent of these people are coming across.

Last, I would tell you that—and let me just say, these expenses and recommendations I am making, these are one-time expenses. We built our boat ramp 5 years ago. I have had no additional expenses in that regard. These are one-time expenses, not recurring or residual expenses to the Federal Government, and they are—it is probably the best money spent on that first line of defense.

Last, I would say to you, the National Guard—the State of Texas, I think, proved a point to the rest of us that added manpower and resources does help curb and deal with the battle. They brought a thousand National Guards. I do not want to talk to you about militarizing. I do not want to talk to you about who should do it, the Federal, the State, what agency within those governments. But, I want to say to you, the concept is solid for the first time in my lifetime, in the recent years.

They brought those thousand men down to the Valley. Their sole purpose, their singular purpose was to sit on the river and be the eyes for Border Patrol. They sat on the embankment of the river. They had no processing responsibilities, no administration responsibilities. They did not have to drive back and forth, up and down the river, like Border Patrol has to do because of their manpower. They sat on that river. The Department of Public Safety (DPS), the State Police, game wardens, worked with all of them during the period they have been down there.

It is the concept. I do not want to get wrapped up in who should do that, but the concept works. It is something Border Patrol does, but they need more men to do it.

The Police Chiefs of McAllen and Mission will both tell you—I visited with both of them this week before I came just to hear it again—that during this period of time, even though none of these people that I just talked about—DPS, game wardens, or National Guards—none of them were put in cities. They were all put on the river in rural areas. But, their effectiveness impacted the cities. McAllen will tell you, and they will give the credit to these three groups, that their crime dropped 9 percent. Mission will tell you, and they will give the credit, too, they dropped 18 percent in their crime.

And, I am not here to argue about the effectiveness. That is the byproduct. If you do it outside, you do it on the river, which is where it should be dealt with first, that is the cheapest dollar you will ever spend, no doubt about it, and there is a byproduct. It will diminish all the other expenses that we all deal with north of the border.

From a businessman's perspective, I will tell you, that is the cheapest dollar you will ever spend, is securing the border. The immigration issue, I am not here for. I am here because I want my home secure. I want my family, my community secure. I am not worried about the economy. I have lived in the Valley all my life. The economy will survive. It will always do well. It will always come back. It may have a temporary black eye, but its not going to curb our economy. The cartels are too smart for that. If you read my testimony, they are like leeches and ticks. They will bleed the animal, being the economy. They will not kill it. They will bleed it.

So, I do not want to argue—I do not want to debate that they are safe. The cities are safe. In our county, we have 1,582 square miles in our district. I have 2 minutes?

Chairman JOHNSON. You are 2 minutes over.

Mr. BRAND. Oh, I am 2 minutes over. Well, you know, that is—  
[Laughter.]

I count backward.

Chairman JOHNSON. We will get back to you on questions.

Mr. BRAND. That is all right. Thank you, sir.

Chairman JOHNSON. Thank you, Mr. Brand.

Our next witness is Monica Weisberg-Stewart. Ms. Stewart is Chairwoman of the Texas Border Coalition's Border Security and Immigration Committee, the collective voice of border mayors, county judges, and economic development commissions along the Texas-Mexico border. The Texas House of Representatives has rec-

ognized Ms. Weisberg-Stewart as a noteworthy business and civic leader in McAllen for her contributions and achievements.

Ms. Stewart.

**TESTIMONY OF MONICA WEISBERG-STEWART,<sup>1</sup> CHAIRWOMAN,  
COMMITTEE ON BORDER SECURITY AND IMMIGRATION,  
TEXAS BORDER COALITION**

Ms. WEISBERG-STEWART. Thank you for inviting me to testify before you today. I am a businesswoman in McAllen, Texas. The family retail business founded by my family in 1958, Gilberto's Discount House, was located eight miles from the Rio Grande River and recently closed after 57 years in business. I want to share with you today my experiences on the border, both as a businesswoman and the Chairwoman of the Texas Border Coalition Committee on Border Security and Immigration.

You will be hard-pressed to find anyone who cares more about border security than those of us who live, work, and raise our families on the border. Let me begin.

We do not believe that the border can be truly secured without fixing our border immigration system. You will hear from others today about community needs, mostly as they relate to the areas between the ports of entry. Since 2000, Congress has more than tripled the budget of Border Patrol enforcement. That effort, combined with better interior enforcement and the improvement of the Mexican economy, has contributed to an 80 percent reduction in apprehensions of undocumented border crossers since 2000. I have great admiration for the work of the men and women of the Border Patrol, or as I refer to them, as the men and women in green.

It is important to note that between one-third and one-half of all undocumented persons today entered this country lawfully through the ports of entry and later overstayed their visas. We have to help our Customs and Border Patrol Agents, the men and women in blue, do a better job of preventing the entry of people who intend to overstay.

It is also important to note that the transnational drug cartels have built a successful business model based on the smuggling of cocaine, heroin, and methamphetamines into the United States from Mexico, and the overwhelming majority of these smuggling activities occur through the ports. CBP officers performing immigration inspections are the primary line of defense against illegal drug flows through the ports of entry.

The fact that no large-scale attack from foreign terrorists has occurred on United States soil since 9/11 indicates that the intelligence and enforcement that has gone into securing the homeland from terrorism has exceeded expectations. With that superior record, we have to continue to help Customs and Border Protection prevent terrorist agents from crossing over to United States soil.

Proposals to fix border security on the Southwestern Border often come from people who do not have daily experience on the border, moving legitimate goods between Mexico and the United States, working with our manufacturers, our farmers, the Customs inspec-

<sup>1</sup> The prepared statement of Mr. Weisberg-Stewart appears in the Appendix on page 400.



tors at the ports of entry, and the Border Patrol Agents between them.

I suggest that Congress focus on these two priorities: Preventing the unlawful entry of people, especially those who might pose a threat to our Nation, through the ports of entry; and preventing the smuggling of high-value drugs that are the lifeblood of the transnational criminal networks through the ports of entry.

Increasing effective security measures at the ports of entry will also benefit every State in the Union. Increased enforcement, more customs agents, better technology, and a functional infrastructure means more legitimate trade. According to the Wilson Center, six million U.S. jobs depend on legitimate trade with Mexico, one in every 24 workers, which amounts to half-a-trillion dollars of goods and services per year.

On a typical day, CBP inspectors process one million travelers, handle 70,000 cargo containers, stop 425 agricultural pests from entering the United States, quarantine 5,000 harmful products and substances, and identify nearly 600 people who raise national security concerns.

Mexico's trade with the United States rose to \$535 billion in 2014. That is a 5.5 percent increase from 2013. Not surprisingly, Texas' largest trading partner is Mexico, yet it can take 3 to 4 hours to legally cross the border from Mexico, and that costs the United States economy money. The result is a significant and chronic loss of jobs and trade on both sides of the border. But, long wait times at border crossings could be eliminated if the Federal Government would aggressively invest in our ports of entry with new infrastructure and technology.

In business, we look at what will give us the biggest bang for the buck, and we believe the biggest return on investment is at the ports of entry. We understand that resources are limited, but those investments in both security and legitimate trade and travel will give us the biggest return.

Let me give you a real world example. In 2013, Congress authorized a pilot program to allow local communities to help pay for additional overtime for Customs and Border Protection Officers. The city of El Paso was one of five pilot projects chosen for a 5-year test. With increased staffing at the ports for nearly a year, traffic volumes have increased nearly 20 percent and almost one-third on vehicles. Even with increased volume, wait times went down.

There are provisions in the Johnson-Cornyn-Flake bill with which we disagree, such as more fencing and waiving environmental laws. As Army trainers teach, there is nothing man can build that man cannot overcome. This certainly holds true with the border fence. People are going over it, under it, through it, and around it. But, there are a number of provisions on which we have worked with Senator Cornyn for many years, such as 5,000 additional CBP agents, more agricultural specialists at the ports, secure two-way communication devices, Border Area Initiative grant programs, ports of entry infrastructure improvement, and a cross-border trade enhancement provision.

Congress has a responsibility to protect the Nation from unlawful entry, from transnational crime, and from threat of terrorism. The Texas Border Coalition suggests you can best fulfill your re-

sponsibility, best fill the gaps in border security by investing the same way that our local communities do, in our land ports of entry.

Thank you.

Chairman JOHNSON. Thank you, Ms. Stewart. Thank you, all witnesses, for your thoughtful testimony.

Chairman McCain is here from a hearing in the Armed Services Committee, so I am going to yield my questioning time to Senator McCain.

#### **OPENING STATEMENT OF SENATOR MCCAIN**

Senator MCCAIN. Thank you very much, Mr. Chairman, and I am sorry about this. We have a hearing going on on cybersecurity, which I know is an issue that this Committee is very involved in and interested in, as well.

I would like to thank the witnesses. I would also like to commend to my colleagues to take a trip down to see Mr. Buffett's ranch and the place he has built on the border. If you would ever like to have a real on-the-ground view of the challenges that we face on our border with border security, it would be a visit to Mr. Buffett's ranch and facility, and he has done great things, including providing Cochise County Sheriff's Department with an up-to-date and modern communications system.

Sheriff Dannels, how long have you been living and enforcing the law on the border?

Mr. DANNELS. Since 1984.

Senator MCCAIN. Since 1984, and what have you seen in the way of progress, or lack of progress, say, in the last 10 years on the border and enforcing border security?

Mr. DANNELS. Excuse me. In the last 10 years, it has pretty much been status quo. Over the last 20 years, when the Plan of the 1990s, which I spoke about prior to you coming in, there were some improvements made with the infrastructure due to the fact that we have two port of entries in our county. We went from a dozen agents that we all knew by first name to 1,300 Border Patrol Agents in our county, and then 200 port of entry folks for the U.S. Immigration and Customs Enforcement (ICE) and Customs that worked there, so 1,500 Federal agents for our 83 miles. So, 15 to 20 years ago is when we saw the big increase in security between our ports.

Senator MCCAIN. So, you have not seen a lot of progress in the last 10 years?

Mr. DANNELS. In the last 10 years, it has been pretty much the same as we saw when the first plan went into place.

Senator MCCAIN. Would you agree with me, contrary to what Ms. Weisberg-Stewart just said, that fences do matter? Fences that are enforced matter, such as we have seen in San Diego?

Mr. DANNELS. Yes. They are a deterrent.

Senator MCCAIN. As long as they are enforced. It is not easy to breach, by the way, Ms. Weisberg-Stewart, when people are there to make sure they do not breach the fence. By the way, the Israelis do a tremendous job at that kind of work.

Mr. Cabrera, do you believe that fences matter?

Mr. CABRERA. Yes, sir, I do. They act as a choke point. It is a good tool for us to use. Granted, people will find a way over it, but,

like you said, if there is someone manning it, if there is someone available to push them one way or the other, we will be able to eventually stop them.

Senator MCCAIN. But, would you also agree, and you, Sheriff, that we now have technology, some of which was developed in Iraq, such as a vehicle and dismount exploitation radar (VADER), where we could achieve 90 percent effective control and 100 percent situational awareness. It is a matter of assets, strategy, and funding.

Mr. CABRERA. I do agree. As long as we have the boots on the ground to help enforce that, it would work.

Senator MCCAIN. Sheriff.

Mr. DANNELS. I would agree, too, Senator, and the other thing I would add to that is the Federal Government has been successful with their Plan of the 1990s for the populated and port areas of the Southwest Border. I would take those successes, along with the technology and the fencing, the infrastructure, the good people from Border Patrol, if you combine all that to take care of the rural parts of the Southwest Border, it would be very beneficial.

Senator MCCAIN. So, with all the other aspects that you were talking about, economies and opportunities in these countries and all those things, is vital long-term in the equation. In the short-term, visiting your facility, it is still pretty easy to get across our border, would you agree?

Mr. BUFFETT. Yes, sir. I would say that Agent Cabrera, when he talks about a choke point on the fence, is exactly the way to describe it, because you are pushing people in different directions. And, we have had people use chop saws that cut the fence. We have many people breach the fence. But, the truth is, it does slow them down. The key point is that you have to have people there to apprehend them.

We have a neighbor, John Ladd, who has counted 47 trucks that have breached through their fence through chop saws. One of them was apprehended because it broke down. Those vehicles could be stopped and apprehended if there were enough people there, because the fence does slow them down and it does make them more vulnerable as they try to cross. But, without the proper personnel, it is difficult to enforce it.

Senator MCCAIN. Agent Cabrera, today, Congressman Salmon and I introduced legislation concerning our national monuments. There is enormous difficulty on some Federal land, such as our national monuments, to get equipment and people in and out of those areas. Would you agree that that is a significant challenge? Therefore, it becomes a funnel for drugs and people?

Mr. CABRERA. Yes, sir, exactly correct. We have a lot of problems accessing certain lands down there where we are at. Obviously, the smugglers do not play by the same rules. They are going to go, regardless if you tell them they can come in or out of this area, they are going where they want to go and we have to go around certain areas and it puts us behind the eight ball.

Senator MCCAIN. And they know that.

Mr. CABRERA. And they know that. They know exactly what we can and cannot do, where we can and cannot go, and they exploit it. They are very sophisticated in how they work.

Senator MCCAIN. Is it not possible, Sheriff Dannels, now from Mr. Buffett's facility where you can see the individuals that cross the border that are guiding the drug traffickers and human traffickers as they come across the border, and then once they get across, there are still members of the drug cartels up on the mountains directing them forward to move their drugs and people? Is that not the situation as it exists today on our border?

Mr. DANNELS. Yes, it is, Senator.

Senator MCCAIN. And, it seems to me that Mr. Brand's complaint, then, is legitimized by this situation, because people who live in cities and other parts of the country are not subjected to their lands being violated, in one case, as you know, a tragic case of a rancher being shot and killed.

So, in summary, I am asking you, this is a problem that can be solved with assets, with a strategy, with people, with fences and technology, and those who say, well, we just cannot do it, obviously, are incorrect, because every nation has the obligation to have a secure border.

I guess I would begin with you, Howard, and I would be glad to ask all the witnesses for their comment on that.

Mr. BUFFETT. Well, I would say it absolutely can be done, but all of the things that you mentioned need to be deployed and they need to be deployed in the proper amounts and limits, but if they are deployed with the correct strategy, I think it is like any law enforcement objective. It can be achieved if you can put the right pieces together and the right parts into motion.

Senator MCCAIN. That is not the case today.

Mr. BUFFETT. No, sir. It is not the case today.

Chairman JOHNSON. Does anyone else want to comment?

Senator MCCAIN. Sheriff.

Mr. DANNELS. I would say one thing, and I do agree with you, Senator McCain, when it comes to it can be done, but we have to have the political will to do that, and understand that border security is a mandate and not discretionary by some. The redefinition of the Plan of the 1990s, which I spoke about earlier in my testimony, I think is very important to look at, and also to maximize already the current allocated resources to Border Patrol and see what we actually need to put on the border, and look at that rural aspect of it. I think we can get a lot of progress.

Senator MCCAIN. Mr. Chairman, I want to thank you for your courtesy. I thank you very much.

Chairman JOHNSON. Thank you.

I am going to go vote, but I am going to turn it over to Senator Carper for his questions, and we will keep the hearing moving.

Senator CARPER [presiding.] Again, thank you so much for joining us today. Some of you served in the military prior to your service today, and as a guy who spent about 23 years active and reserve in the Navy as a Naval Flight Officer (NFO), down on the border about a month ago when a Navy P-3 airplane, my old P-3 airplane, with the Department of Homeland Security looking for bad guys, finding a few, too. But, thank you for that service.

Monica, do people call you Ms. Weisberg-Stewart?

Ms. WEISBERG-STEWART. Yes.

Senator CARPER. Ms. Weisberg-Stewart, what you had to say here today actually reminded me a good deal of what I have heard in the trips I have been to the borders, and particularly in Arizona and in Texas, and that is while we need to certainly not forget the work that is being done between the ports of entry, the land ports of entry, we also need to invest in the ports of entry themselves. A lot of drugs are coming through, and a lot of folks that are undocumented illegal trying to come into the country, they come through the ports of entry. So, we sometimes forget that, but I do not think we should.

One of the things that is helpful in a hearing of this nature is to see where you agree, and as it turns out, there is a fair amount of consensus. I do not know if you have noticed that. One of the things I hear from just about every witness is we could use a few more bodies down on the border. We have added a whole lot. We could use a few more.

We could certainly make them more effective. And, Othal, it is nice to see you again. Thank you very much for your insights. I think you made some compelling points about not just putting more drones in the air or tethered dirigibles in the air. I am all for doing that if we can do it effectively. But, there are some other ways that we can provide technology and force multipliers that maybe we have not thought too much about, and I really appreciate what you had to say to us.

We had an Inspector General (IG) report from the Department of Homeland Security recently that said we are not getting our money's worth out of the drones and that the Department of Homeland Security has to make sure that we are doing that. We are going to spend all that money, we are going to add more drones, we have to make sure we are getting our money's worth, realizing they do not work every day, in every kind of weather condition.

A couple people said we need to add either force multipliers or more bodies on the border to patrol, protect, and then may later on do immigration reform. I think we can do both at the same time, and the immigration reform bill that Senator McCain co-authored actually does both at the same time. It adds people on the border, provides for more technology. It also tries to make sure that for folks in Mexico or Central America who want to come up here and work for a while and go home, a guest worker approach, that maybe that is not such a bad idea. So, I think we need to do a little bit of all of that.

I am going to ask Mr. Buffett, I mentioned earlier how grateful I am to you and your family, your Foundation, for going after the root cause of a lot of the illegal immigration coming up from the Northern Triangle, Honduras, Guatemala, and El Salvador. I saw some numbers recently that indicated about roughly 220,000 people came into this country illegally from Mexico—maybe they were apprehended coming in illegally from Mexico last year, 220,000, and that is less than the combined numbers coming in detained illegally from Honduras, Guatemala, and El Salvador.

My dad always said to my sister and me, "Just use some common sense," and I think if we use some common sense, it would seem to me to say that if, somehow, we could convince some of those hundreds of thousands of people trying to get into our country ille-

gally from Honduras, Guatemala, and El Salvador, maybe it would make the job easier for our men and women that are patrolling the border and make them more effective. So, I think you all have outlined, whether you knew it or not, a pretty good strategy for our country.

Mr. Buffett, you spent a fair amount of time really trying to, in the spirit of the Good Samaritan, "who is my neighbor," the kind of investment you all have made in Honduras, Guatemala, and El Salvador is really commendable. As it turns out, over 20 years ago, you recall, a bunch of gunmen rounded all the Supreme Court justices of Colombia, put them in a room, and shot and killed 11 of them. There was a time that the drug cartels down there were running havoc, and leftist guerrillas, as well.

And, we got involved in something called Plan Colombia. And, it was not just the United States coming in and doing all kinds of stuff for Colombia. They had to do a lot, and I like to use the Home Depot ad line: You can do it, we can help. And, they did it and we helped, and so did Mexico and so did nonprofits and maybe you and your Foundation, I do not know.

But, talk to us a little bit, if you will, Mr. Buffett, about the kind of things that we can be doing, including with the nonprofit community, that—you probably know the three presidents of Honduras, Guatemala, and El Salvador have come together in an Alliance for Prosperity, kind of like Plan Colombia, and we have a role in it and so do they. Would you just give us some thoughts about this, please.

Mr. BUFFETT. Yes. I would separate Mexico a little bit from Central America, only because it is our direct neighbor, and so I think I absolutely believe that we can take those lessons learned in Plan Colombia and work closer with Mexico. But, right now, there are parts of Mexico that the government does not even control. They need a lot of support and a lot of help, and it would have to be a very extensive program, and I think we would have to build trust before we could really invest in that, but we could do that. I think it is important to do that. We are losing that battle, and we lose that battle on the streets of Decatur, Illinois, or Omaha, Nebraska, or Tucson, Arizona, wherever you are. We are losing that battle with our own citizens in terms of the drug cartel and their success.

I think when you look at particularly El Salvador, Guatemala, Honduras, not so much Nicaragua, other than when we work in a direct conflict area, like in Congo, they are probably the most dangerous countries we travel to. If you stop and think about that, they are not very far away. We have a border that certainly from time to time they breach. And, if you think about what that means to our country in the long run, if we do not make the investments and build the relationships and the trust and the support to help those countries get their economies under control to provide opportunities at home, we will continue to be this safe haven. We will continue to be the place where everybody wants to come.

We are the richest country. My dad always told me, when you buy a house, do not buy the most expensive house on the block. And, we are the most expensive house on the block, so to speak. We are the place where you want to come. When I am anywhere in the world, no one comes up to me and says, "Could you help me

get to China?" "Can you help me get to any other country?" They come up and say, "How can I get to your country? How can I get to America?" There is a reason for that.

So, if we do not address those root causes, we will continue to have these issues that we face today.

Senator CARPER. Great. Thanks so much. And, later today, I think we have the foreign ministers from three of those countries maybe coming up to meet with us today and folks on this Committee, including Senator Ayotte.

Senator Ayotte.

#### OPENING STATEMENT OF SENATOR AYOTTE

Senator AYOTTE. Oh, thank you so much, Senator Carper.

I wanted to just note—I was going to ask some questions, and Senator Heitkamp is going to vote and is coming back and very much wants the opportunity to ask questions, too——

Senator CARPER. As far as I am concerned, you can ask as many questions as you want. I do not know about her——

Senator AYOTTE. Well, I told her I would preserve her place.

Senator CARPER. No, I am kidding. [Laughter.]

She is good, too.

Senator AYOTTE. That is great. Thank you.

Senator CARPER. Thank you. Thanks for looking out for her.

Senator AYOTTE. Thank you all for being here, and I wanted to follow-up on—I serve on the Armed Services Committee, as well, and have heard from General Kelly, who is the Commander of U.S. Southern Command, and he has been very clear with us about the efficiency of these networks that really are the transnational criminal organizations, in terms of what they can smuggle up from Central America, and he has been fairly direct with us that he believes that they could smuggle almost anything, including if they wanted to smuggle weapons of mass destruction, other things that terrorists would use.

And, I wanted to get your thoughts on the terrorism angle, because he has been fairly direct about it in terms of a worry that these networks are so efficient that we have the drugs, we have other things, which I want to follow-up and ask more about that, but just this idea of terrorism and do you share his concerns about this.

Mr. DANNELS. Senator, if I could answer that one, I one hundred percent agree with what the General was saying. We just discovered 2 weeks ago a tunnel in our county. This was a tunnel about 2 years old, that I hate to use the word, but it is a VIP tunnel, which means human smuggling is not coming through that tunnel. You are looking at a large amount of drugs, money, and what you are alluding to is those terrorists or those people who pay the price to come in our country and harm our citizens. I am very concerned about that. If you can bring drugs or product through, you can bring terrorists through. So, it is of great concern and as a gateway, I call it, a premier—we are 24 premier counties on the border—we are a gateway to this country's problem that is going to happen.

Senator AYOTTE. Or, potentially, ingredients for mass destruction——

Mr. DANNELS. You bet.

Senator AYOTTE [continuing]. Or something like that.

Mr. DANNELS. I agree.

Senator AYOTTE. And, as we look at what we are doing with all of this, and I know that you have already made the point that this has to be mandatory, I think it is also important to put it in that context, that it is not just this threat of—it is not just the issue of people trying to come over here to work. This really can be a huge security vulnerability for the Nation for a larger attack. You would agree with me on that.

Mr. DANNELS. I would agree. And, one of the main reasons I wanted to be here today was to address the unsecure border, which I have already spoken in my brief statement on, but also the fact that the importance of local government working in collaboration, all three levels, local, State, and Federal. If we are going to combat this problem, it is not just the Federal Government's problem. It is all our problems. But, when you look at the supplements and the funding to support the local efforts, it is very small. So, we need to include all local government if we are going to really resolve this problem.

Senator AYOTTE. And, it is local government and then it is people like the—General Kelly has told us in the Armed Services Committee what more resources he needs for interdiction, too, as well, so, thinking about, really, a strategy that we can all be working together, because this is you are on the ground locally. There are ways that we can better resource and make sure that we are focusing on the responsibilities that our military have in these areas, as well, along with State Government, you know, ICE, all of us together.

Mr. DANNELS. Right.

Senator AYOTTE. And, one issue that my State is seeing that I know was touched on earlier, but it is really a huge public health issue, and not only a criminal issue, but this heroin. New Hampshire has had a 60 percent increase in heroin drug deaths. It is devastating. And, one of the problems is that the prices of heroin have really dropped, and so you have people in some instances who are addicted to prescription drugs who are transitioning over to heroin. It is just so easy to get and so cheap. This is another issue I have talked to General Kelly about, as well.

All of you, I would love to hear, certainly, Sheriff and your impression of how do we increase our interdiction of heroin, in particular, so not only we can stop its flow, but, frankly, I want to drive up the price of this stuff so that we can help, along with all the other efforts we need to do prevention, treatment, and all the things our police are doing at every level, and also our treatment providers, all of us, public health officials. So, what are your thoughts on that? I would turn it over to all of you or whoever wants to jump in first.

Ms. WEISBERG-STEWART. You are talking about a \$40 billion illegal drug traffick that is not being detected, and much of that is coming straight through the ports of entry. I think you would find it interesting to know that your State alone exports \$400 million worth of goods to Mexico and ranks second as your export partner, and it equates to 28,531 jobs rely on your trade with Mexico.



If these drug traffickers sold a legal product, they would be considered a Fortune 500 company in the United States. They are very well manned. They are very well funded and very well equipped. But, the men and women in blue are not funded to compete or win this war against exactly what you are talking about, Senator.

That is why we believe that when you are looking at homeland security, you need to equate the whole big picture into that equation, especially when we are talking about the cartel and the drugs coming straight through the ports of entry.

Senator AYOTTE. What other thoughts do we have on heroin? Or, obviously, you can say it about any drug, but right now, we have a huge heroin crisis.

Mr. BUFFETT. Well, I think that you have brought up something that few people probably understand. I patrol on the streets of Decatur, Illinois, and sometimes in Arizona. When you start arresting 65-year-old grandmothers for heroin use, you have to ask yourself, what is going on, and what is going on is prescription drugs have gotten more difficult or more expensive and heroin has gotten cheap.

If you look at the statistics, and I am sure that Agent Cabrera could confirm—Texas may be different than Arizona, but in the Tucson Sector in Arizona, heroin crossing that border is up in triple digits. Meth is up in triple digits. The cartel, as was stated, is a very clever business and we should never underestimate what they are able to achieve. So, they will adjust what they bring into this country based on what they can sell and what the pricing is.

And, so, I think one of the things that we have to realize is the significant impact that they are having on this country and our citizens it is a very complex issue and there is no simple answer to it, and there is no single answer, by any means. But, I think, understanding the impact and the significant impact and the population that it is beginning to impact even further is something we have to deal with, and if we do not, we are going to find ourselves with a really serious issue, or more serious than what we have today.

Mr. DANNELS. One thing I would like to add on that, Senator, is the need for interoperability and collaborated efforts from the local all the way to the Federal, like we have been talking.

Senator AYOTTE. Right.

Mr. DANNELS. And, I will give you an example of that, a true life experience that happened down in our area, where we had intelligence and information coming across our port of entry. We went down there, and this gentleman, I believe he was around the 70-year-old age, where he was coming across the port of entry every morning about 7 o'clock in the morning and he was carrying seven pounds of meth, seven pounds of heroin, and seven pounds of coke. And, we went back and did the history check through the port of entry for, like, 60 days straight, every day, same time, he came through there. This was a 70-year-old man that was bringing this in there.

So, we cannot forget the fact that there is a greed game going on here, too, for money, so—

Senator AYOTTE. Yes.

Chairman JOHNSON [presiding]. Thank you, Senator Ayotte.

Senator AYOTTE. Thank you all. I appreciate it. And, if you have additional views to offer, I certainly would appreciate that. And I, unfortunately, have to go run to get a vote in, so I do not want to cut you off, but I want to make sure that I understand everyone's perspective——

Mr. CABRERA. Well, let me just add real quick, Senator, recently at the Brian Terry Memorial Station near Naco, a tunnel was discovered. The tunnel was a pretty high speed used tunnel, and our intel knew for some time that a tunnel was being used and that we should patrol that area more aggressively. However, we were unallowed to patrol that area due to Border Patrol management would not let us patrol that area and work in that area. Once the tunnel was finally discovered and put out of commission, it had been used for some time. And, if we cannot capitalize on what we know because we have certain boundaries that we can work in, they do not want us working the interior patrols, then we are always going to be hindered by this.

Senator AYOTTE. Well, yes, that is absurd. We all have to work together on this, so thank you for pointing that out.

Chairman JOHNSON. Thank you, Senator Ayotte.

I guess I will start my questioning, seeing as I am the last man standing here.

Agent Cabrera, you mentioned that, certainly from your perspective and that of your fellow Border Patrol agents, that, at best, we are apprehending 30 to 40 percent versus management is saying about 75 percent. How certain are you of that? I mean, is this based on any figures you are keeping on a daily basis, or where do you come up with 30 to 40 percent?

Mr. CABRERA. Well, Senator, out there in our areas of operation, we leave large swaths of land uncovered, maybe 20, 30 miles at times. I remember one time in the not-too-distant past where we actually, at a 53-mile station, we had one person assigned for that day. We count signs. We check the trails. Some of these trails are two or three feet wide with not a speck of vegetation on them, but we are not allowed to patrol out in that area. They constantly change—they make the zones larger so it is harder for us to call in these “got aways” and they just do not want to hear it.

I have been told by our chief of our sector that we are going to bleed heavily on our flanks at all of our stations. The Western flank usually gets neglected because we do not have enough manpower to get out there. Our agents will count the foot signs. They will call it in, and at the end of the day, the numbers get manipulated so that it does not show up correctly.

Chairman JOHNSON. And, again, the drug traffickers, the human traffickers, I mean, because I was right there on the border with folks like you, and they have the cell phones right there. I mean, you are standing right next to their spotters and they are telling you exactly where the patrol agents are, correct?

Mr. CABRERA. That is correct. As much as we watch them, they watch us. However, they have an unlimited budget. They can see things better than we can. They have resources that watch our stations, that watch our helicopters, right across from the airport, and there is nothing we can do about it.

Chairman JOHNSON. Sheriff Dannels, is that pretty much your estimate, too, somewhere between 30 to 40 percent apprehension of those we detect?

Mr. DANNELS. I would agree with the agent on that. And, one thing I have learned over my three decades is the statistical data that comes from Border Patrol switches every 6 months, and so I do not use a lot on statistics as I use the quality of life by the people that live on the border and what they can tell you when the border is secure or when it is getting safer, just based on the traffic coming through their private lands and the damage they see and the fear they live by. So, I would agree with the agent.

Chairman JOHNSON. Of the other three witnesses, does anybody want to dispute that 30 to 40 percent, or does anybody want to say that it is 75 percent or higher?

Mr. BUFFETT. Well, I can tell you that we have regular traffic across our border. Mr. Brand may be able to brag that he has the most people crossing, but I will tell you, in our sector, we have probably the most drugs. It is not a competition.

Chairman JOHNSON. Yes. Those are some real great topics. [Laughter.]

Mr. BUFFETT. But, I think the truth is, across our ranch, we have multiple breaches daily, and a large majority of those individuals are not caught. They are not apprehended. I can tell you that one time I asked the Sheriff. I said, can we go sit down on the border all night long with your scope truck and see what we see? In 6 hours, we saw one Border Patrol Agent, and we probably were covering close to, 15 to 17 miles of the border.

If I were a Border Agent, from my law enforcement experience, if I was on that border, because we have driven that border at one and two a.m., if I saw six people breach that fence and it is pitch darkness, do you think as an individual, with the rules that they have to operate under, that I am going to proceed and follow those individuals and try to apprehend them? I am not going to do that. It is not safe for the agents to do that.

I can only speak to our ranch, but if I had to estimate, and I could not prove this, but I would estimate that 50 percent of the people coming across that ranch, at least, are not apprehended.

Chairman JOHNSON. OK. Does anybody else want to dispute the 30 to 40 percent?

OK. Mr. Buffett was talking about you basically have two types of individuals crossing the border, those that are really coming here seeking opportunity, and it is a rational economic choice when the wage disparity is somewhere three to four times higher here than it is in Mexico and Central America, and then you have the criminals. Is there any information, any estimates in terms of what percent are coming here for work versus how many, in terms of illegal crossings, are really the drug cartels and the drug mules and people coming across that are criminals? I will throw that one to you, Agent Cabrera.

Mr. CABRERA. Well, Senator, I do not know if there is any specific number that is coming through that we know the actual percentage. What I do know is my family has lived down there for some time. My great-grandmother and my grandmother grew up right alongside the river. And, what my grandmother would tell me

was when she was young, people would come up and they would give them food and they would feed them, give them some water, let them sit in the shade for a little bit, and then they would send them on their way.

Now, the same people that live down there on that border, they say it is a different type of people that are coming. It is a different generation that is coming through. Now when they see people walking up the gravel road, they go inside. They shutter the windows and they lock the doors and they just do not want any part of it, not because of some sense of country or whatever the case may be. It is a sense of personal safety—

Chairman JOHNSON. Out of fear.

Mr. CABRERA [continuing]. And security, yes, and the clothes are stolen from them. They still use clotheslines down there. Clothes are taken from the line and they are, just, "You know what, let it go. I do not want to be any part of it." So, I think that is a good telltale sign.

Chairman JOHNSON. Sheriff Dannels, do you have some sort of sense in terms of what that percentage is?

Mr. DANNELS. I do not know what the percentage is, but I want to comment, if I can follow-up what the agent is saying, in regards to safety. Scott Arenas is one of the ranchers that lives in our country that your staff met with and spent some time with when they came down. He would have loved the opportunity to come here. I met with him Saturday before I flew out on Sunday.

Chairman JOHNSON. He will probably get an opportunity.

Mr. DANNELS. Yes. I hope so. And, it is a fact that he had a scout sitting right on his property that he eyeballed on Saturday, because they have been pushing drugs pretty hard through his property. How can I say this? This is amazing. It is a fact that these ranchers and farmers and these citizens that live in the vulnerable areas are afraid to leave their homes for the fact that they would be broken into. Scott Arenas, for example—I will speak on his behalf—he has been broken into four or five times, one time holding the door closed while they are trying to break in.

The other part is that they are afraid to go on their ranchlands without being armed because of the fear of what happened to our rancher who was shot and killed, Rob Krentz. It is just a horrible way to live when we live in the United States.

But, when I get the phone call at two in the morning, "Sheriff, they just broke into my house again." "Sheriff, they just took my jewelry and my guns." I mean, this is just horrible stuff, but it is real to us down there and that is why your visits are so important to us.

Chairman JOHNSON. Mr. Brand, because I believe it was in your testimony, you talked about you have been on the border for 60 years and you have seen a dramatic change in just the conditions on the border, if you can just speak to that before I turn it over to Senator Heitkamp.

Mr. BRAND. Senator, I put it in my testimony, growing up in the Valley, we spent a great deal of time on the river. You go down, you ski, you swim, you picnic, and you camp out. People had cabins. People had portable trailers down there that they kept. It was a very relaxed atmosphere.

If you go down to the river right now, you will see us all gone. It is all gone. No one does any of that anymore. No one. And there is a reason. It is not the immigrants. It is the cartel. And all of the farms that we had and that we leased the owners actually lived on the land. To this day, now, I can go back and show you every one of those, and they are all gone, the colonials, the churches and general stores that we had on our farms, they have all been torn down and moved. All the landowners that we worked with have all moved off their property because it is no longer safe.

Chairman JOHNSON. OK. Thank you. Senator Heitkamp.

#### **OPENING STATEMENT OF SENATOR HEITKAMP**

Senator HEITKAMP. Thank you, Mr. Chairman, and I want to assure everyone here that we are voting and that is why people are running in and out, that your testimony today is absolutely critical as we move forward with, I hope, a mutual goal, which is to stop unauthorized individuals from entering our country. I do not know how I can say it any more clearly, that that is the job of a government, to secure their border.

I have been on the border at least four or five times. Once, I went to El Paso. That was before I was a United States Senator, and I was encouraged to cross without an ID. I said, no way am I not taking my driver's license. I do not think I exactly look like a Mexican national, so I was just waved in without even checking credentials when I crossed back.

I was able to go to the border with Cindy McCain, back to El Paso, saw the changes that they had made. It was a completely different border crossing from the border crossing that I was at 4 years before that.

I had a chance to basically see the border crossing in McAllen, see the challenges that the personnel had there with children, unaccompanied minors basically coming to the border and surrendering. I think the good people of McAllen, not just the Federal officials, stepped up and provided services, and McAllen is to be commended for how they responded to that crisis.

Then I had a wonderful opportunity at the request of Mr. Buffett to come out to the Arizona border in Cochise County and was hosted by the Sheriff and by Mr. Buffett.

I would encourage everyone on this Committee who thinks they know about border issues to actually go to the border and actually visit with people who are on the front line, whether they are law enforcement officials, whether business people, whether they are ranchers, who Mr. Buffett speaks for today. It is an atmosphere of fear. It is an atmosphere of intimidation. It is an atmosphere where my land used to be worth this and it is not worth this anymore. We have to prove negligence on the part of Border Patrol or Border Protection before we are compensated for the damage done to our land. That is another issue we have not even touched on.

But, what frustrates me with hearings like this is you all come with good ideas, you all come aware of the situation, and you get a lot of politics, I think, back. So, how about we just start talking about solutions. How about we just step up and say, let us get it done. Let us figure out how we are going to actually listen to the sheriffs on the border. Let us talk about how we are going to listen

to the landowners on the border, how we are going to listen to businessmen on the border, and listen to the people who are on the border who are responsible for protection.

And, so, I think that there have been a number of really great ideas today that have been advanced, particularly in your testimony, Mr. Buffett. I think we need to have a broader discussion about what those things do.

But, getting to the view from a mile high, Sheriff, I think you said it best when you said, we are operating on a plan of border security that was written in the 1990s to basically prioritize the points of entry, prioritize the large population areas, and as a result, this balloon has pushed particularly the criminal element to the rural communities where those individuals are most vulnerable, and I speak as somebody who was involved in rural law enforcement for a lot of years.

So, my question to you, Sheriff, is how do we institutionalize a consultation or a communication with border sheriffs, with border chiefs of police, in order to make sure that those voices are heard at the Federal level?

Mr. DANNELS. We already have an association, Senator. It is the Southwest Border Coalition, made up of sheriffs, the 24 counties on the border from Texas to California. We collaborate. We work together. We have a strong association. And, I would say, 99 percent, we are in agreement on what needs to be done. All the way up to the National Sheriff Association, where there is a comprehensive plan on border security, along with Arizona and Western Sheriff Association.

One of the suggestions I have, along with my fellow sheriffs, is that we respectively work with our State Governors, who automatically work with you all when it comes to keeping all the stakeholders involved. I think it is so important.

The other aspect of it is the local collaboration. In our county, we work very closely with Border Patrol, the State agencies, the chiefs, myself. We meet every 3 months. We talk about the hot topics, what is going on. And, we bring solutions to the table on how we can do the job better, our interoperability, our intelligence sharing, our ability to work face to face. But, once it seems to get out beyond the walls of Cochise County, beyond the walls of the State of Arizona, it becomes very fuzzy and blurry and very complex. And, I understand the complexity of this issue. Do not get me wrong.

Your sheriffs are a direct voice of trust in their respective counties, so I think it is important that we continue that voice with the sheriffs and not ignore us.

The other aspect, I have to say—I would be remiss if I did not say it—is the funding absence for local government. Again, like I was talking with our Border Team, that is a mission-driven team under the Sheriff's mission supported by Border Patrol, Customs, and U.S. Forest, again, 6 to 8 weeks, we took 30 smugglers down. Three, I believe, were teenagers. And, the Federal Government has a technicality where they do not challenge or do not put away teenagers for smuggling. They go back across the line. We actually prosecute them. We ran them as adults, put them in our detention, and then up to the prison. So, like I said, all 30 went to the State prison. We have no issue with that.

When it comes to our State criminal alien——

Senator HEITKAMP. But, you are incurring the costs.

Mr. DANNELS. We are incurring all these costs, and I will give you an example. Under the State Criminal Alien Apprehension Program (SCAAP), which has been redefined to, I think, very challenging, so in the last 2 years, we have had three-quarters of a million dollars in expenses to house illegals at the county jail. In return, the Federal Government has given me about \$45,000. So, I am getting pennies on the dollar to house illegal criminals in our jail.

Senator HEITKAMP. I think the point that I want to make is that as we are talking about resource reallocation, or plus-up, we need to involve the sheriffs——

Mr. DANNELS. Yes.

Senator HEITKAMP [continuing]. And we need to involve the programs that provide for collaboration with local law enforcement. And, I think that could not be more critical.

Mr. BUFFETT, obviously, I spent some time with ranchers and with various people on the border, and you have, I think, very astute observations about how we can do better, and I want to applaud you for the work that you are doing all up and down the border in terms of providing hope for some of those ranchers who have not felt very hopeful in the past.

But, I want to turn to some of the issues that Ranking Member Carper was talking about. You have been all over in some of the most war-torn, desperate places in the world, particularly in Africa and Central America. How would you evaluate today the security of Central America compared to other places you have been?

Mr. BUFFETT. Well, we spend a lot of time in the Democratic Republic of Congo, and other than when I am in an active conflict area, I would say that Honduras, Guatemala, and El Salvador probably outrank most countries in Africa in terms of—it is a different kind of threat. I will say it is a very different kind of threat.

But, it is dangerous going to those countries, and for the people who live in those countries and I do not think there is hardly anybody in this room, if they were going to speak frankly, who would not say that if they were living in those circumstances where kids are inducted at early ages into gangs, parents lose control of their families, they cannot make a living that is adequate, they cannot feed their kids, I do not think there is anybody in this room, if they were really going to be honest about it, who would not say, I would try to go North, as well.

So, I think my point in my testimony is that as long as we do not have a border that is secure, as long as the people think that they can cross that border, as long as they believe that they can get into our country, we are contributing to that humanitarian crisis by not controlling that border. And, I do not think it is always phrased that way, but I think it is important to phrase it that way, because in the end, we are all human beings, whether we are Senators, sheriffs, ranchers, or whoever we are. We are all human beings and we have to care about how our actions impact other people.

And, so, it is true. The majority of the responsibility clearly falls on those governments. There is no question about that. But, if we

use that as an excuse to ignore the problem or not help solve that problem, then in the end, we are going to continue to suffer in this country. There is no question about that.

Senator HEITKAMP. Would you agree that the United States—oh, sorry.

Chairman JOHNSON. Senator Heitkamp, I am happy to do a second round, but I have some questions, as well, and I am not sure what the timing of the hearing is going to be, but I appreciate your involvement.

And, I will also say the reason, obviously, we have the people on the ground is to lay out that information, to involve them.

And, the other part of this process—again, how to solve a problem is you have to properly define it, you have to understand the depth of it, you have to acknowledge reality, you have to admit you have that problem. The reason I want to set up a process of not only multiple hearings but also multiple roundtables, a little more informal setting where we can really drill down and get the information, get the facts, describe the realities so we can actually start designing real solutions.

But, I also have a number of questions I want to continue on. Again, not acknowledging the reality, if we have the higher-ups here in Washington saying we are 75 percent secure but we are only 30, I mean, we are deluding ourselves. I just want to ask about the possibility of achieving 90 percent apprehension rates. Is that possible? And, I will start with you, Agent Cabrera.

Mr. CABRERA. Well, sir, I do not know if that is possible. I would like to think it is. Until we start getting more proactive about what is going on down there, being proactive and going after what needs to be done as opposed to reacting to what is already being done, we are always going to be caught off guard.

Chairman JOHNSON. Again, we are a long ways from that 90 percent.

Mr. CABRERA. We are a long ways from that 90 percent. I do not know.

Chairman JOHNSON. Sheriff Dannels, can you kind of address that. I mean, do you think 90 percent is achievable? And, again, we have had a number of people now talk about we need more agents. We need more bodies just on the border. Where we had National Guard positioned in Texas, that worked. How many more people do we need that are actually boots on the ground that are at the border?

Mr. DANNELS. Well, to begin with, Senator, I think, first of all, you need to look at your allocated resources and see if they are being maximized on the border to get a true number of what you actually need on the border, and then reset the plan of primary deterrence at the border and not away from the border, and then secondary intervention from there.

The other thing I think is so important, I do believe we can get up to that 90 percent plus. It is going to take some time. It is going to take some political will to do that. And not political posturing, but political will. Where the border is—and I appreciate your stance and our conversation we have had in the past to understand this. It is a very comprehensive problem. But, it is a mandated problem, to protect our freedoms and liberties. And, if we do not



secure our borders, we will never get there. Or, at least, if we do not try, we will never get there.

One thing that my citizens, and I have hit on this, is they have become very numb to the fact that nothing is going to change, and that is frustrating for me, directly linked to my citizens in Cochise County, and it makes no sense to me, either, because the Plan of the 1990s is still in effect. Not many people talk about, how do we redefine this plan? I think we need to look at that.

Chairman JOHNSON. I have seen the VADER system and the unmanned aircraft. I have seen the aerostats. I have seen the fixed towers. I have definitely seen that we have probably improved our ability to detect. I am not sure that I have seen the technology that Senator McCain was talking about that has been developed in Afghanistan and Iraq. Is any of that positioned anywhere on the border right now, or is that just what has been used in the military?

Mr. CABRERA. As far as the radar systems that they have out there in Israel, we do not have any of those down there. What we have are some blimps and that is pretty much it. We hear there are drones. We have never seen them, so—

Chairman JOHNSON. OK. But, again, we can detect, and we can improve our detection. We can apprehend. We can improve our apprehension. But, then, if all we do is process and basically give somebody a Notice to Appear, and then give them a bus ticket or a plane ticket and disperse them throughout America and have them really join those people living in the shadows, we have not really solved much of the problem.

Mr. Brand, you are shaking your head. Is that your understanding of what we are doing?

Mr. BRAND. Senator, one other thing that I have participated in and been a part of for the last 9 years is the Department of Health and Human Services (HHS) Office of Refugee Resettlement (OOR) program, with these 16-year-old boys, and what we do with them and how we process them, and we spend more money on these kids as they come across than we spend on our own people.

Chairman JOHNSON. I will be back.

Mr. BRAND. Then I will stop.

Senator CARPER [presiding]. Senator Ernst. Senator Johnson is running to vote. I have to run and speak at a Finance Committee hearing. You are the new Chair. I will be back.

#### **OPENING STATEMENT OF SENATOR ERNST**

Senator ERNST [presiding]. Fantastic. Thank you so much, Ranking Member.

Senator CARPER. Get some good stuff done. [Laughter.]

Senator ERNST. Thank you. So nice to have you here. I appreciate your testimony. A lot of hearings going on this morning.

I would like to start by—and I hope nobody has covered this yet, but those of you that have the information available, what is the working relationship with various agencies as it pertains to the Mexican government and the drug cartels? What are we doing in that relationship, or how can we affect that? Is their border security effective against bringing in weapons, drugs, anything from the drug cartels that exist in Mexico and Central America? What is our relationship like?

Mr. CABRERA. Well, Senator, I can tell you firsthand, as far as dealing with the Mexican authorities, they are no help at all. We have actually been there where we have called them to interdict some people that had run some drugs to our side. They took them back to the Mexican side. We called the Mexican authorities to come and check these people out. They actually opened the gate for those people to leave and then locked up behind them.

We had another one where we were in a stand-off with guns drawn from our position on a boat in the river to a position at a Mexican park, and the police came up, drove around the vehicles, stopped and talked to somebody, shook hands, and drove away.

They tell us to call the Mexican authorities, they will fix it, they will get it done. We rarely see them. Every now and then, we will get some assistance from the military, and that is just basically because the military does not have any more friends in Mexico, so we are their only friends left. But, for the most part, the cooperation across the border is just not there from our standpoint on the river.

Senator ERNST. That is extremely disheartening to hear that. I think we do need to do more, but we do need greater assistance coming from those authorities, as well. Any other thoughts?

Mr. DANNELS. Senator, if I could add to that—

Senator ERNST. Yes, Sheriff.

Mr. DANNELS. Relationships are built on trust, and right now, that does not exist on the border communities. And, to give you an example, in fact, there is a cartel hit on me right now. If I stepped into Mexico, I would be in serious trouble. I would be on CNN or FOX or a major network for what they would do to me.

The point is, we do not go into Mexico. We have very limited dialogue with them. It is all based on lack of trust and based on the cultures on these border communities. I agree again with what the agent is saying, it is very challenged and very strained.

Mr. BUFFETT. I might add, from a little different perspective, two quick examples. We have met with our Mexican counterpart ranchers on the other side of the border and they are quite descriptive about the experiences they have and the fact that they get zero support in terms of any agencies on that side of the border, and they have to live with the drug cartel.

We are actually in an area in Arizona, it is not very flat. We are at 4,200 feet and we have hills that are 4,600, 4,700 feet. There is one across in Mexico. They have built a little shed on top of the hill. I cannot walk on our ranch without knowing that I am being watched across the border. And, believe me, those spotters have excellent technology, as well.

But, what the ranchers told us is that they have no option but to basically be compliant, because if they are not compliant, they are told that we know where your kids go to school, we know where your wife shops, and so if they are not compliant, they are under constant threat. But, the point being that they will tell you themselves that there is absolutely zero support from law enforcement agencies on their side of the border to support their position.

The second thing I would tell you is a few years ago, probably about 5 or 6 years ago when there were an estimated 5,000 people crossing at the Nogales area, I went downstate in Altar, Mexico. I would not do it today because I probably would not come back. But,

I followed the buses up to the border, and on the way to the border twice, the Federales stopped the buses and they would check your citizenship. And, if you were other than Mexican (OTM), they would kick you off and they would take you down to their facility—now, it is in Chiapas. If you were a Mexican, they would allow you to proceed to the border.

So, all it does is emphasize the fact that Mexico is not only not supporting border security, but, in a sense, they are condoning it. That is from the other side of the border. So, absolutely, you see it on both sides of the border. There is minimal interest or support from the Mexican government, from my personal experience, to do anything about those coming across the border.

Senator ERNST. Again, very disheartening.

I know Senator Ayotte had brought up General Kelly's testimony, the testimony that he gave coming from SOUTHCOM the other day, and I do believe that we have to crack down on these drug cartels and the trafficking that occurs across the border. I think we need to do that. But, I do believe that we need a physical barrier, and I think I have heard maybe pieces of that.

But, until we have that, and I know in your experience, Mr. Buffett, Mr. Brand, living in that area, having these issues, until we actually secure the border—I know that you have dealt with this for years, and what costs have you seen associated with this? Is there anything that you have done on your own property to make sure that you are protected, your livelihoods are protected?

Mr. BRAND. When I first became manager of the district, I went down, and the first morning I was there, between 7:30 and 8, we would have vans zoom through our part of the property, the 45 acres the Water District owns on the embankment of the river, and I asked, so that is the cartel? That is either drug or people. Well, call the Border Patrol. No, we are not calling the Border Patrol. Well, why not? Because they know we work here. They know we are here, and if we call, they know we are the ones that did it because we are the only ones that saw them. That was going on at 7:30, 8 in the morning, and 3:30, 4 in the afternoon. I finally figured out that was the shift change for Border Patrol.

And, so, I will tell you, for me, that is not how we are going to work and live in our community, and so we began trying—and this has been 10 years. First, I thought street lights would work, but that only helped them see better at night when they came across.

Then we had what we called splashdowns, which Border Patrols are familiar with. When the drug cartel was intercepted, they would turn around and drive their cars back through our property as fast as they could off the embankment and splash down in the water, get out, pull the drugs out, and take them back, and they would have men on the other side ready to meet them to come out and pull the drugs out before the car sank. The Border Patrol, the last time they came to our district, they pulled out five cars, one of them still with the drugs in it.

So, we put up Jersey barriers, which, if you are familiar with them—

Senator ERNST. Yes, very familiar.

Mr. BRAND. So, we put those up and it stopped.

And, so, the next step was we still had traffic. When you all announced a cutback several years ago, we had the most traffic we have ever had. It was said in our local paper, that the government is considering cutting back the hours, the manpower, and the gasoline for Border Patrol, the very next day and for several weeks following, we started having dozens and dozens and dozens of people come through our property.

I have three generations of people that have worked for the Water District over a 65-year span, and none of them have ever seen this before. And, so, I went to the board and the board said, well, you put up a fence. You look at getting a fence. You get more lights. You get looking for security officers.

Well, I went to Border Patrol to give them a heads up, because if there are going to be any guns on the river, they like to know it. And they said, well, give us an opportunity to help you with that.

So, they came down and they put up their portable towers, which you have seen, as well, manned towers with day and night infrared thermal imaging cameras on top of those. When they did that, the traffic stopped. That was the first time it just stopped. And we went back to them and asked them, have you ever put these towers on the embankment of the river? In this particular sector, they had not, because they did not have enough of them, nor had they had the opportunity. And they did and it worked. So, now they man that thing. That has been there ever since then, which has been years now. It stays there now.

We went and put a boat ramp in, just finished a water trough this week for the horse patrol. Our Water District in the last 10 years has probably invested over \$300,000—

Senator ERNST. Wow.

Mr. BRAND [continuing]. In our facility in order to assist, knowing that there are things they cannot do that we can that assists them and vice-versa. And, this is what we believe is—again, we put up towers. We put up cameras, gave them access to those cameras. These are the things we have had to do.

All of those things put together has made us—as far as I am concerned, we are probably in the safest area right now, anywhere you can be on the U.S. border.

Senator ERNST. So, it is safer, but it was up to you to initiate—

Mr. BRAND. Well, it was up to the partnership—

Senator ERNST [continuing]. Jersey barriers, OK.

Mr. BRAND. It was a partnership.

Senator ERNST. Right.

Mr. BRAND. They made suggestions, and they said, could you put up more floodlights? We did it. They just put a 125-foot tower, camera tower, portable one several months ago. Again, it has stopped the traffic. Of course, we also have a wall through the middle of our 45 acres, and a gate.

And, so, I will tell you that the gate does work. It has a place. There is not one single for Texas, which has half of the total Mexican border, there is not a single solution that works on the whole border. All of these things that we have talked about today all have to be incorporated, but you have to take the lay of the land to determine what the correct approach is. And, around these cities,

they have been right. It has funneled people out of the cities and into the open. Thank you.

Senator ERNST. And, Mr. Buffett, what type of safeguards have you seen or utilized?

Mr. BUFFETT. Well, I remember when we bought this ranch, somebody came to me and he said, "Let me give you a little advice. Actually, let me give you a warning. If you see gentlemen crossing"—I do not know why he called them gentlemen, but—"if you see gentlemen crossing your ranch and they are wearing burlap bags on their legs, absolutely do not confront them and walk away." That is a typical way, the Sheriff will tell you, to cover their tracks, and Agent Cabrera would tell you, to cover your tracks. These men are armed and they are dangerous because they will protect what they are bringing across the border. So, we are in a constant environment of concern.

I will tell you that—because we are doing some things differently on the border—I think it will be interesting to see how they turn out. We have a situation where the Border Patrol—the Federal Government—has taken quite a bit of land in a certain respect in terms of roads and hills by eminent domain on our ranch. We have been able to have good, cooperative discussions with them, but there are things that could have been handled differently, for sure, as a property owner.

One of the things we are doing if I were going to spend my time on anything, I would spend it on this. We had ranchers come to us. The Sheriff came to us. Senator Heitkamp helped us with this, with a meeting with Secretary Vilsack, and we are now implementing a program, which we started last year, where we are going to try to clear a mile deep for about 38 miles of the border of all the invasive species of creosote and other invasive species. This will change the face of how the border looks for these ranchers.

For one thing, they are concerned about their safety, which is, of course, one issue. The other is that they want to reclaim their lands. So, this is a water and grassland conservation project and it is also a border security project in one. We have great support from U.S. Forestry, from the National Resources Conservation Service (NRCS), and the Border Patrol has been supportive in certain cases, and not in all cases.

But, I think, at the end of the day, it is something new. It is different. It has not been tried to this extent, at least not in Arizona, and we will see what the results are. The funny thing is, the Border Patrol says we will catch more people. The ranchers say less people will cross. So, we do not know who is right. But, it is a pretty innovative program. It is costly. We have 100 percent buy-in from the ranchers. We have good support from some Federal agencies, but not all the leadership. But, we do have great support, also, from the local people.

Senator ERNST. But, it is a great starting place, so that is encouraging to hear.

And, Sheriff, just one final question before I turn it back over to the Chair. What are you preparing for as far as the summer influx this year? What types of measures, security measures, are you putting into place, ideas, concerns?

Mr. DANNELS. One thing we have done is realize that our local solutions are mandates, living where we live. So, we are going to keep and sustain what we are already doing. We have a Ranch Advisory Team which is made up of ranchers, farmers, and citizens that advises on a daily basis if there is a critical event going on in our county or the smuggling is picking up. It is great intel-driven information. We also have a Ranch Patrol where our two deputies go out there. That is a direct voice for our ranching and farming folks.

And then we have a Border Team, and that Border Team gets strengthened every day. We just added two more outside agencies into that, where they go out and they work intel based on the Ranch Advisory Team and the Ranch Patrol, and they work in collaboration with Border Patrol, Customs, and they have been very beneficial in bringing trust back to the ranchers that there can be a difference on their lands, that they have seen little results and frustration. And, it is also bringing trust back with Border Patrol, because there are ranchers in our county that have trespassed Border Patrol from being on their property based on lack of trust, and that is so sad.

So, we have taken a multi-badge one mission approach in our county, and the interoperability, the intel sharing, the ability to communicate is so important, not just talking face to face. What I am talking about is the IT infrastructure, which we have built that system up, which we are bringing all that into one all throughout the county. So, we have a lot of neat programs that we are doing and we will continue to sustain that, but it comes back to a budget issue, also, and we get very little support. Stonegarden is about the only program that is beneficial that really seems to work well for us in Cochise County, which still has some challenges, do not get me wrong, but overall, that is a good program. But, besides that, we get very little.

Senator ERNST. Very good. Thank you so much for your testimony today. Thank you, Mr. Chair.

Chairman JOHNSON [presiding]. Thank you, Senator Ernst.

I will give all the witnesses a chance to kind of sum up, or if you have a brief comment at the very end here, but I have a couple other questions I want to continue to go through.

I was surprised by Ms. Weisberg-Stewart's contention—and it may be true, I just do not know. I just want to ask Agent Cabrera and Sheriff Dannels, I mean, is it true that most drugs are actually being funneled through the ports of entry as opposed to illegally smuggling between those ports? Agent Cabrera.

Mr. CABRERA. Senator, I do not believe so. I know there is quite a bit that goes through the port of entry, but we do have quite a bit, I think. They just, over the past weekend, just in our area, that small area along the border, over \$5 million worth of marijuana was caught just within 2 days. That is only what we catch. Granted, marijuana is a little easier to catch than some of these other high-value drugs. Obviously, they are going to put a little more into making sure they are secured.

But, I do believe there is a lot coming through the port of entry, but there is also more than a ton of it coming through the river itself, or in Arizona's case, the desert.

Chairman JOHNSON. Sheriff Dannels, do you believe what Ms. Weisberg-Stewart said is an accurate assessment?

Mr. DANNELS. I would say the port of entry has its attempts to come through, and get through, if you want to call it such. But, I truly believe that the go-arounds, the open seams on our border, Southwest border, are more common.

The second part about that is the tunnel that was discovered several weeks ago, that was approximately a 2-year-old tunnel. By the way, that was discovered by a traffic stop—intel-based, but by a traffic stop. In that vehicle was almost 4,900 pounds of marijuana. They would back it up, load it where the shaft for the tunnel was concealed, load up the vehicles. So, if you think about that, in 2 years, how many drugs went through that is amazing, which, by the way, it was, like, a quarter of a mile from the port of entry.

Chairman JOHNSON. Ms. Weisberg-Stewart, obviously, I need to give you a chance to respond—where did you get that information from and how can we verify that?

Ms. WEISBERG-STEWART. Well, actually, sir, if you would look at statistical information that has actually come from the Department of Homeland Security, I think you would be amazed what you find. But, I think it is important for you to also look at the big picture of facilitating legitimate trade and travel and what those affect. We have heard a lot of between the ports of entry, but not at the ports of entry.

Our ports right now are suffering tremendously. Your State alone exports a total of \$2.8 billion. Mexico is your second export partner, and 117,665 jobs rely on your trade with Mexico, and if you looked at the ports of entry, you would actually see the security and you would actually see that, right now, we constantly put the cart before the horse on dealing with actual security needs. So, we believe that these goods are coming through because we have not accurately as a government facilitated the trade and travel and given them the funds necessary in order to curtail the amount of drugs that are coming through.

Chairman JOHNSON. Being an exporter myself in my former life, I am all for free and fair trade and functioning ports of entry, but the question was really about drug smuggling.

Ms. WEISBERG-STEWART. Mm-hmm.

Chairman JOHNSON. When I was on the border with the people who spent a day with me—and I appreciate that, Sergeant Cabrera, on a Sunday and your day off—one of the revelations, or certainly one piece of information I got was that I have always felt law enforcement, prosecutors, district attorneys, they are always fighting over jurisdiction so they are the ones who get to prosecute and send somebody up.

That was not the case on the border. What I heard is that—and I just want to get the reaction if this is basically true—but, I heard we are not even prosecuting, for example, marijuana smugglers unless they have at least 500 pounds of marijuana. We just do not bother to prosecute. And, the jurisdictional battle is, “I do not want to touch that prosecution. You take care of it.” Was that an accurate assessment of the people I was driving around the border with that day? Sheriff Dannels, we will start with you.

Mr. DANNELS. Senator, you are exactly correct. Teenagers are an example. I think we have four or five in our jail right now that are remanded juveniles, have been arrested, picked up. We actually remand them as adults and put them in our center to prosecute them. The Federal Government will not prosecute them——

Chairman JOHNSON. Again, so the drug traffickers use teenagers because——

Mr. DANNELS. They will not prosecute. And, I was talking to the Sheriff in Yuma, Sheriff Wilmot, last night. There is an issue right now where those illegals that have child pornography, they will not prosecute. And, we just started talking about that last night. So, again, these burdens are on our local county attorneys, and that is why I have such a great partnership with ours when it comes to doing that and making sure that we can prosecute these folks. They are bad in the communities.

I do not know if you realize, the five busiest Federal courts in this country are in the Southwest, and that might be a clue of our border issues, again.

Chairman JOHNSON. Agent Cabrera, did you want to comment on that, or—I see you kind of writing things down there.

Mr. CABRERA. Well, Senator, like we talked about before, a lot of times, like Sheriff Dannels said, we do not mess with the juveniles. For some odd reason, we will not prosecute them. If it is weekends, a lot of times, they will pass on some of these smuggling cases because it is a 4-day weekend——

Chairman JOHNSON. So, do we just set them free, then, just release them?

Mr. CABRERA. A lot of times, we do. We will do an administrative smuggling case. We may seize the vehicle. They will come pick it up on Monday and start from scratch.

With some of our agents that get assaulted, if it does not meet the threshold, if he does not have enough blood or bruising, they do not prosecute. One thing I have always admired about the State of Texas is if you so much as bump into a police officer, you are going to do some jail time—unless that police officer happens to be a Border Patrol Agent. Unfortunately, with the Border Patrol Agents, they just do not put too much in the way of deterring people from assaulting our agents.

Now, on the national level, throughout the Border Patrol, we have more than one assault per day on our Border Patrol Agents. Unfortunately, there are probably even more that go unreported because these agents know that nobody is going to prosecute for them.

Chairman JOHNSON. Talk to me about the drug cartels' control over the Mexican side of the border. I certainly witnessed all kinds of things just in my day there and saw a bunch of photographs that really showed the impunity with which the drug traffickers really are controlling that border. Can you speak to that a little bit?

Mr. CABRERA. The interesting part about that is if some of these people that were coming, they could have taken the bridge. They could have come across through the port of entry, asked for amnesty or—what is the word I am looking for—credible fear and it would have been granted and they would have broken no laws. But, the smugglers control who crosses where. If a group of immi-



grants are walking toward the bridge, the cartels will come up and say, look, you are not crossing that bridge. You are going to go through this river. No, well, I would rather cross through the bridge. Well, you do not have a choice. You are going to cross through here at this point, at this time, when we tell you, and on top of that, you are going to pay us.

And, they send them across when they want to send them across, where they want to send them across, because they know it is going to tie up our resources, and in doing so, then they can do the end-around and run some either high-level, high-interest illegal aliens or some drugs around the back side when all of our agents are tied up with a group of, say, 80, 90, or 100 people, trying to get them sorted out.

Chairman JOHNSON. Is it also true that they use rafts to paddle the drugs over, but those rafts are tethered to a truck so if they do meet some resistance, they just pull them right back over and—again, they can do it with impunity because they control the Mexican side of the border. They do not have to worry about being picked up by any Mexican officials, correct?

Mr. CABRERA. Exactly. The Mexican officials are already paid off on that side. They can operate as long as they have the money, they control that river.

At first, they were oaring those things across, back and forth, and it got to the point where our Boat Patrol Unit were confiscating their rafts and intercepting their loads. It got to the point where they would tie a rope to the end of the raft with a john boat, and if they saw the boat coming, the guy on that truck would take off and that raft would just skip about that water and get about 30, 40 feet into Mexico before it stopped.

Chairman JOHNSON. So, again, they have total control over the Mexican side of the border. They can just sit there and watch. They can have people on our side of the border with their cell phones making sure that we all know where the Border Patrol Agents are. And, when the time is right, they can just head on over and go, oops, it did not work so good, they just pull them right back on the other side, and, again, they are not being caught. They are not being apprehended on the Mexican side. They can just bide their time, and that is why it is so incredibly difficult for us to fully detect and fully apprehend unless we have a whole lot more people on the border.

Mr. CABRERA. Exactly. And, if you go down that river at night with infrared, you will see, literally, every quarter mile, you will see somebody in the trees along the Mexican side, and they watch. They count how many people are in the boat, if they are going upriver, downriver, and it is like checkpoints on the Mexican side. They know that, OK, the boat has passed Point A, so by the time we run this load back and forth, the boat cannot possibly make it at its top speed. They have it all figured out.

And, there are consequences for these guys losing loads. When they come across with their drugs, if they lose it, sometimes you will see them wash up onshore a couple days later. They are real strict in how they do their business on their side.

So, they are running the show, at least on the Mexican side, and to an extent on our side.

Chairman JOHNSON. There is a really high incentive to succeed in getting the drugs across successfully in the United States.

Mr. CABRERA. Yes. Unfortunately, there is a very high incentive. They rule out of fear.

Chairman JOHNSON. Senator Carper, I was about ready to go down the table there and give them an opportunity to offer some last comments. Do you have some questions before I do so?

Senator CARPER. Where did you learn to do that?

Chairman JOHNSON. From the former Chairman of this Committee.

Senator CARPER. Oh, I remember him.

Chairman JOHNSON. Just a great guy.

Senator CARPER. Senator Lieberman. [Laughter.]

Collins, one of those.

Before we do that, and I am glad that the Chairman does that. For me, it is the most helpful part of any hearing we have had, especially on issues where there is not unanimity of opinion, is that on a diverse panel, like, where is the consensus, because we are all about building consensus here. At least, we should be. That should be part of our job.

Let me just come back to you, if I can, Ms. Weisberg-Stewart. Talk to us about force multipliers. Let us talk about force multipliers at the ports of entry, and just give us some examples of some that you think make sense.

I had my cell phone, and I remember being at one of the border crossings a couple years ago and the woman who was there, the lady in blue, was bringing people through. She held up her, I think she called it an Enforcement Link Mobile Operations (ELMO) device, it may not have been an ELMO, but, she said, "This device allows me to know not only what the next truck is and what is in it, but who the driver is and the record of coming across the border. And, in fact," she said, "we can line up several trucks behind it. I have that information on my handheld."

That is just one of a number of examples. Give us some other examples of force multipliers that enable us to do a better job and maybe not add a huge number of people at the border crossings.

Ms. WEISBERG-STEWART. Yes. I am glad you started off with discussing some of the technology needs. Some of our ports of entry are so antiquated that the electric grids do not even allow some of the security functions to take place. So, for example, the bandwidth, which is what you are referring to, and allows that timing information to go through the ports of entry cannot even be used at some of our antiquated facilities because they are not able to get that timely information in that quick basis.

Some of our information that is coming across, which is a reporting system which actually says—let me use the name of Jose Garcia—is coming across our ports of entry and there is a Texas hit on one Jose Garcia, you are going to see every Joe, Jose, or anybody by that name being pulled over because the system today does not go through and adequately provide that specific Jose Garcia is the one that actually has the issue. So, right there, you are adding more times on because the technology today is not allowing some of those things to take place.

When you are talking facilitating trade right through those ports in an expedient fashion, one issue is personnel. One is the actual gate which those individuals or Customs and Border Protection are in. We have some of those where we have had officers electrocuted because the facilities are in such bad array that water has actually come and rained through that system and fried some of the computer systems.

So, when we are talking about the big infrastructure problems, we have issues at Port of Hidalgo, for example, where the command center is facing the wrong direction. It is facing toward the opposite side of the bridge. We built some brand new ports of entry that do not even have enough lanes in them to deal with the actual amount of traffic that is coming across those ports of entry.

And, when we talk about drugs, there are some statements, and we have a white paper that we will be more than happy to share with you all that quotes from the Department of Justice and the Department of Homeland Security about the amount of drugs and arms coming across.

We also have, when we are talking about actually checking, we know that arms and cash that are arming these cartel members are coming straight through our ports of entry. We know this, and there have been many reports from both governments, the Mexican government and the U.S. Government. But, at this point, our infrastructure currently today cannot hold a Southbound check except for looking for arms and cash because the realities are our infrastructure cannot hold it and cannot maintain it.

Now, there is other technology that is out there that——

Senator CARPER. I am going to ask you to wrap it up, because I want to let the others have a chance——

Ms. WEISBERG-STEWART. Sure.

Senator CARPER [continuing]. To talk about force multipliers. Just finish your sentence.

Ms. WEISBERG-STEWART. At the end of the day, our country depends on the facilitation of trade and travel, and legitimate trade and travel comes across our ports of entry. There are a lot of programs and out-of-the-box thinking that we can do. But, just doing things the way we did it in the past is oftentimes the sign of insanity, because what we are doing right now is not truly fixing all our issues.

Senator CARPER. Thank you. That was a long sentence, but a good one.

Ms. WEISBERG-STEWART. Sorry.

Senator CARPER. That is OK. [Laughter.]

Othal Brand, I was just glad you came today so I could say your name a few times. [Laughter.]

I think you once told me where that name came from. That is a great name.

You gave us, in fact, I think, several really good pieces of information for us. I thought I knew a little bit about the challenges ahead of us in securing the border. You all have given me some really good new information, and especially you with respect to better access to the water and the technology, the kind of investments we can make. Do you want to give us one more force multiplier? If you do not have any other ones, that is fine.

Mr. BRAND. No. I ran over two-and-a-half minutes, so I do not think that I should— [Laughter.]

Chairman JOHNSON. What I will say, too, in this process, consider this your closing statements. [Laughter.]

Senator CARPER. Go ahead, and then I am going to ask Mr. Buffett, and if we have time—

Mr. BRAND. I will just tell you this. I do not like living in fear and I do not like living in an area that I do not feel safe, especially when you are talking about your home. I do not like it, and—

Senator CARPER. I do not blame you. But, again, I want you to stick on force multipliers. That is really what I am looking for.

Mr. BRAND. Well, I cannot help you on force multipliers.

Senator CARPER. OK, fine. Mr. Buffett.

Mr. BUFFETT. Well, I think this falls under that category. I know that the Sheriff will know what I am speaking about. The Border Patrol will accept no private money and no private support. That limits some of their ability to increase force multipliers. So, we are trying to go around that, to be honest with you, work through the Sheriff's Department, and make them the CCSO assets and have the Border Patrol work with us. But, I think the Border Patrol could work more effectively and open up the opportunity to work with private resources. I think you could increase some of those force multipliers.

Senator CARPER. And, for Mr. Dannels and Mr. Cabrera, I was going to ask you about who do you think is the best right-handed batting first baseman in the major leagues, Mr. Cabrera. Do you have any ideas?

Mr. CABRERA. Can you repeat that?

Senator CARPER. Miguel Cabrera, your cousin. [Laughter.]

All right. We will come back to you for the next one.

We know there are problems with drones. We have an IG report that says, as promising as the technology is, it is not being realized, and we are drilling down on that to see how it can be better. We know that tethered dirigibles have a fair amount of—are being used in some places very effectively. I do not know if you use stationary observation towers or even mobile observation towers in your county, in your State. Do you, and if so, would you comment on their effectiveness? We have heard very positive things about them in other parts of the border. Go ahead. Mr. Cabrera.

Mr. CABRERA. Yes, we do have stationary observation towers—well, more like the blimps, the little systems we have out there. They do work very well. They have a good range. However, they are at the mercy of the wind.

Senator CARPER. No. We are talking about the stationary towers, as opposed—not the blimps. We saw some tethered dirigibles, I think about a thousand feet they go up, I guess, or 10,000 feet. But, the stationary towers. And then we have some that, they are not stationary. You can actually move them along the border there. They are mobile. That is what I am asking about.

Mr. CABRERA. There are some stations in our sector that have some. In the area of McAllen, where we are the busiest, McAllen and Rio Grande City, we do not have any—

Senator CARPER. I understand that. But, I think you probably have, given your experience and all, you have probably heard from

your colleagues on other parts of the border and some of the folks you represent. What do you hear about stationary observation towers?

Mr. CABRERA. I think they work well. The only issue I would have with them is the fact that they are stationary. They would not be able to—unless we can saturate the area and have interlocking fields of view, then we would be at the mercy of the distance of that device.

Now, if we had something that was more mobile, which we are starting to get into little by little, if we have these things that we can move around and be flexible and address the threats where they come through, I think that would be more effective, because we can adjust as opposed to just being static in one position.

Senator CARPER. Go ahead.

Mr. BUFFETT. Senator, they are in the process of constructing two of those towers on our property—

Senator CARPER. Are they?

Mr. BUFFETT [continuing]. So they have an overlapping footprint. What is missing on those towers is they do not have the funding to put the radar, and if you understand how the systems work, it is one thing to have personnel constantly looking through cameras, but the radar is what makes those cameras about 100 times more effective, and that is what is lacking.

Senator CARPER. That is a great point. We have been sending out drones for a couple years without the VADER systems and without sophisticated observation systems. So, those are just examples of some of the investments, smart investments, that we can make, and if we do that, we are going to make the people you represent, Chris, a whole lot more effective, and, Sheriff, your folks, too.

This has been a great hearing and we are very grateful to all of your presence and your input. Thank you so much.

Chairman JOHNSON. Thank you, Senator Carper.

I was hoping to combine it, but it really did not do justice to it, so we will start with Ms. Weisberg-Stewart, just a closing comment. Try and keep it brief.

Ms. WEISBERG-STEWART. Sure. When we look at border security, to many people, it might mean many different things. To those of us who live on the border, you have heard from us. The Arizona border is quite different than the Texas border, but as Senator Carper has mentioned, there is a lot of commonality.

One thing is to definitely address between the ports of entry and find solutions in that area and at our ports of entry, and if we are able to accomplish those two areas, then we have actually done something to secure our country. Thank you.

Chairman JOHNSON. Thank you. Mr. Brand.

Mr. BRAND. Mr. Chairman, I would say to you all, like I said earlier, it is a chess game right now. Because we do not have all the resources and the manpower, the cartel wins it because they constantly move. And, every time—and they do have, even at our pump station, they have a guy sitting on a tree in the wind with a cell phone constantly. And, they have that lined all up, as Officer Cabrera talked about, whereas where Border Patrol is in the Valley, they move. They have to move, because they do not have the technology to man. So, they put it where the need is, and if it has

been solved in one place and there is no movement, they will pick it up and move it somewhere else because they have to. And, until the day comes where you can have it, solve it all the way, it is going to continue to be a game.

In the Valley, what we know in my lifetime is that we know there are two reasons we are safe from cartel element that we talk about today, which is obviously prevalent in our area. As long as we do not interrupt them, get in their way, and as long as we do not mess with their business, we are fine. But, if we do either one of those two things on our side, they will do to us anything and everything they do to the people on the other side right now, and we know that. People who live in the Valley know that, and the rural areas along the rivers. We know that.

Chairman JOHNSON. And that is a stark reality. Thank you. Mr. Buffett.

Mr. BUFFETT. I want to take my last minute to try to get to a point that I think you were trying to make, Mr. Chairman, which is on drug interdiction. When you are at a port facility, you have the opportunity to stop and examine any vehicle and person coming through that port. When you get outside of that port, you have two things happening. First, you have to find them, spot them, and then you have to respond to that, and you have to have the resources to respond to that, two very different sets of circumstances.

And, if you understand drug interdiction from a law enforcement perspective, what it comes down to is repetition, it comes down to personal contact, and it comes down to numbers. To give you an example of that, if you took the Sheriff's office and you wanted to compare it to the port versus outside of the port, if he runs a canine team through the FedEx and the UPS facility every day, he is going to find drugs with that dog. If that dog never shows up, he is not going to find them. And, it is the same thing. You put officers on the Interstate and you implement drug interdiction, and it is repetition and personal contact.

You have that automatically at the ports. You do not have it outside the ports. So, I would contend that there is a large amount of drugs moving outside those ports.

And, thank you for letting me be here.

Chairman JOHNSON. That would have been my assumption. Not that I am going to do it, but I would not go through the ports. I would go to where I thought I might not get caught. Sheriff Dannels.

Mr. DANNELS. Senator Johnson, let me be the first to say thank you very much for having us. To hear our local voice here is so important to my citizens and all the folks that live on our Southwest Border.

The Plan of the 1990s has caused us great damage over the last 20 years. There are two No. 1 stats we just came out with that I am not proud to report on, but it is true. No. 1 is out of all the counties, over 3,100, I believe it is, counties in this country, we had the largest decrease in the country, for decrease in population. People are leaving our county because of the way it is. They do not want to live in fear, like you were talking about.

No. 2 is, we just came out last week, is per capita, we are the No. 1 fraud county in the country, and that is your ID thefts, your

embezzlements, your frauds. I truly believe a lot of that has contributed to our border.

The one most critical thing I worry about every day as a sheriff is another loss of life. Whether that be a citizen, an officer, a deputy, an agent, it is a great concern to me because of our border being insecure. So, every day that goes by that we keep talking is another day that just draws more and more pressure in our county.

Those that choose to live on our border should deserve the same freedoms and liberties of those that live here in D.C., Iowa, and beyond. I grew up in Illinois and lived in Illinois until I was 18 years old, then going down there for the last 32, 33 years. What a difference of life, and it should not be any different under the same Constitution.

Thank you again.

Chairman JOHNSON. Thank you, Sheriff. Agent Cabrera.

Mr. CABRERA. Senator Johnson, I would like to close with securing the border, it is essential. It is not just essential for our border communities, our areas in the Southern part of Texas, but for the entire Nation. We are committed to keeping illicit drugs, terrorists, people entering illegally out of the country because it is going to make our community safer. It is going to keep drugs out of our streets, off our streets, out of our communities, and off our schoolyards.

The more we make it appealing for people to come into this country the wrong way, the more people are going to make that journey and more people ultimately will not survive the trip, and that is just a terrible thing, especially when you are dealing with children.

Chairman JOHNSON. Well, thank you, Agent.

Obviously, this is just the first hearing of, multiple hearings, multiple roundtables. We will continue to involve the people on the ground, because from my manufacturing background, I have solved a lot of problems, and I understand there is a process, and the first step is admitting you have one. Unfortunately, as a Nation, I do not think we have really come to grips with the full reality, the full complexity of this. There is too much demagoguery in this, too much simplicity, I think, directed to this problem.

So, this is complex. We are going to build a record, and we are going to involve the people that really do understand what that reality is and we are going to face those realities. As harsh as they are, as unpleasant as they are to face, I refuse to write or mark-up and be involved in a border security in name only bill. And, this is going to involve not only what we need to do in terms of infrastructure and personnel, but we have also got to look at the incentives that our immigration system creates for that type of illegal immigration, and we have to look at drugs.

Certainly, the trip down to McAllen, Texas, I mean, if anything—if you need that point reinforced, how much of this is being driven by the drug traffickers, and let us face it, I think the numbers I have, we spend about \$25 billion per year fighting the war on drugs. It is sad to say, we are not winning that war. So, we have to get serious about this.

But, again, I just want to thank all of you for the time you have taken. You have traveled here. You have spent a lot of time, very thoughtful testimony, very thoughtful answers to our questions. So,

again, I really appreciate it, and to the extent you want to stay involved, we are going to want you involved, as well as other folks in your position.

This hearing record will remain open for 15 days, until April 1 at 5 p.m. for the submission of statements and questions for the record.

This hearing is adjourned.

[Whereupon, at 12:22 p.m., the Committee was adjourned.]



## A P P E N D I X

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**Opening Statement of Chairman Ron Johnson**  
***“Securing the Southwest Border: Perspectives from Beyond the Beltway”***  
**March 17, 2015**

*As prepared for delivery:*

Good morning and welcome.

Today’s hearing is the first, of many, dedicated to securing our borders. In the next two weeks, the committee will hold four border hearings designed to begin outlining and defining the problems we face on the southwest border.

Securing our border is incredibly complex. The U.S.-Mexico border stretches 2,000 miles across four states and nine border sectors — each with its own unique terrain and distinct challenges. For example, the Texas Rio Grande Valley (RGV) sector border is in the middle of the Rio Grande, a narrow, often shallow, and easily navigable river. Meanwhile, in Arizona, two north-south mountain ranges provide cover for smugglers and illegal crossers. Protected lands and a Native American reservation restrict access to approximately 80 percent of the Arizona border.

Both push and pull factors drive illegal immigration, and an unsecure border not only contributes to our broken immigration system but also threatens Americans’ national security and public safety. Any border security legislation must recognize that this is a multifaceted problem.

And this problem is exacerbated by our lack of information. We don’t know for sure how many people today are “living in the shadows.” And, most important, there is no solid way to track illegal flow at our borders. How many people today entered this country lawfully but overstayed their visas? How many people crossed the U.S.-Mexico border undetected? Out of those detected, how many were apprehended? Out of those detected and apprehended, how many were let go with a notice to appear? Out of those who received a notice to appear, how many showed up for their court dates? Out of those who showed up for their court dates, how many were actually deported?

Many bills have been passed by Congress to address our border and reform our immigration laws. Did any of them achieve that intended result?

| Year | Law                                                         | Unauthorized Pop. |
|------|-------------------------------------------------------------|-------------------|
| 1986 | Immigration Reform and Control Act                          | ~3,900,000        |
| 1990 | Immigration Act of 1990                                     | 3,500,000         |
| 1996 | Illegal Immigrant Reform and Immigration Responsibility Act | 6,290,652         |
| 2001 | Patriot Act                                                 | 9,620,483         |
| 2002 | Enhanced Border Security and Visa Entry Reform Act          | 10,258,680        |
| 2004 | Intelligence Reform and Terrorism Prevention Act            | 10,977,950        |

|      |                                     |            |
|------|-------------------------------------|------------|
| 2006 | Secure Fence Act                    | 11,714,296 |
| 2007 | 9/11 Commission Recommendations Act | 11,981,292 |

As chairman, I have stated that border security and enforcement is a priority for this committee. That has not changed. I am not interested in introducing a bill that offers border security in name only. I also have no interest in a bill, no matter how well intended, with unintended consequences that actually make matters worse. All of us in Washington should be required to learn, as student doctors do, to first do no harm.

In order to achieve this, this committee is going to build a very strong record. We will spend the month of March properly defining the problem. Only after fully recognizing the scope of the problem can we begin discussing solutions.

The witnesses here today have traveled from Arizona and Texas to help describe the challenges we face on the southwest border. Thank you for your willingness to share your first-hand experiences. I look forward to your testimony.

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Opening Statement of Ranking Member Thomas R. Carper:  
***“Securing the Southwest Border: Perspectives from Beyond the Beltway”***  
**March 17, 2015**

*As prepared for delivery:*

Last month, our Chairman, Senator Sasse and I traveled to South Texas to see firsthand conditions along the border. We met with ranchers, talked to Border Patrol agents, and saw officers in action at a port of entry. We learned a great deal, and I'm pleased that today some of our friends from the southwest border have joined us here in Washington to continue the conversation that was begun down there.

I've made several such trips to both our northern and southern borders in recent years. Each time I came away impressed both by the dedication of our border security personnel and by the security and technological advances we have made. We've invested huge amounts of resources along our southern border in particular. A quarter of a trillion dollars over the past decade, and it shows.

In fact, last Congress, we held a series of border security hearings in this Committee and learned that overall apprehensions of undocumented migrants are at 40 year lows. We learned that crime rates in many communities near the border have also dropped dramatically. We also had experts tell us that the border is more secure than it has ever been. Many of those I've spoken to during my trips have agreed. Having said that, is there more work to do? You bet there is.

We know that while many border communities are among the safest towns in America, the drug cartels are a real danger and are growing more sophisticated, and often more violent, as well. Ranchers, in particular, face persistent and daunting challenges on their lands. We also know that our ports of entry need to be modernized. These border crossings have received far less attention and resources than the Border Patrol over the past decade, but they are just as important to our security and economy. And of course, we are all aware that the Rio Grande Valley last summer faced an overwhelming surge of Central American children and families arriving at the border. While some of these migrants tried to evade our agents, it's my understanding that most simply turned themselves in.

Based on what I've seen and heard, I am convinced that we need to take at least three basic steps.

First, we need to continue to make investments at the border. But they must be smart investments. To me, that primarily means innovative technologies that can serve as force multipliers for the unprecedented number of agents we've stationed along the border. In fact, when Chairman Johnson, Senator Sasse and I were down on the border, we heard repeatedly, that 'technology is the key to securing the border.'

Of course, what works in Arizona, may not work in Texas or along the northern border. In some areas, unmanned aerial systems with advanced radar technology or fixed-wing aircraft with sophisticated cameras may be what are most effective. In other places, it could mean surveillance systems on tethered aerostats or mobile towers. In still others, it could be a tamed wild mustang that lets an agent patrol remote or environmentally sensitive lands more effectively.

We also need to enable our ports of entry work more efficiently, so that we can better focus our inspections on potential threats rather than legitimate travelers. But as we make these investments to support our frontline agents, we must avoid the temptation here in Washington of being overly prescriptive.

Second, we must get to work on comprehensive immigration reform. This cannot and should not wait until we have achieved some elusive, perfect measure of border security. Congress needs to begin a real debate on a comprehensive and thoughtful 21st century immigration policy for our nation – a

policy that is fair, that will significantly reduce the nation's budget deficit, that will continue to slow the flow of immigrants to our border with Mexico, and that will strengthen the economic recovery now underway.

Last Congress, two-thirds of the Senate came together and overwhelmingly passed such a measure. It wasn't perfect, but it took significant steps to fix our badly broken immigration system while reducing our deficit by nearly \$1 trillion over the next 20 years and increasing our GDP by 5 percent. And by creating better legal channels for immigrants to come to our great country, we make it easier for border security officials to focus on the people or things that pose a true risk. Letting millions of undocumented people already living here – many for their entire lives – to step out of the shadows and undergo background checks is also good for local law enforcement. In short, comprehensive immigration reform is good for security.

Third, we must address the root causes of the challenges we face along our border with Mexico and not just the symptoms. In this case, that means helping to address the violence and desperation that has caused so many children, families and others to risk life and limb on a 1,500 mile journey across Mexico to come to our country. The leaders of Guatemala, Honduras and El Salvador have embarked on an unprecedented collaborative effort, called the Alliance for Prosperity, to boost security and prosperity within their region. They have committed to investing their own money in the development of their infrastructure and workforce, and to making difficult changes to promote transparency, security, and the rule of law. We should be good neighbors and support them in this effort, just as we helped Colombia reverse its downward spiral with Plan Colombia in the 1990s. It is the right thing to do and the pragmatic thing to do. It's a much better approach than continuing to deal with the devastating and costly consequences of vulnerable children and others making the trip to our border.

I was pleased to see the President request \$1 billion dollars in next year's budget to partner with the governments of the Northern Triangle as they seek to address security, governance and economic challenges. For example, some of this funding would support better police training or the expansion of youth centers for those at risk of gang violence and recruitment; some of it would be used to attract foreign investment or support efforts to build a stronger court system and electric grid. Change in these nations won't happen overnight, and it won't be easy, but I believe we have a moral and fiscal obligation to help our neighbors in the Northern Triangle. After all, addiction in the U.S. to cocaine, heroin and other illegal drugs directly contributes to their misery. But, if we work together, progress can be made. They can do it – we can help.

With that, I look forward to hearing from our witnesses.

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**Testimony of Chris Cabrera  
On behalf of the  
National Border Patrol Council  
In front of United States Senate Homeland Security and Governmental Affairs Committee  
March 17, 2015**

Chairman Johnson and Ranking Member Carper, thank you for providing me with the opportunity to testify on behalf of the National Border Patrol Council (NBPC) and the 16,500 Border Patrol Agents that it represents.

My name is Chris Cabrera and I joined the Border Patrol in 2003, after serving 4 years in the U.S. Army as a paratrooper. I have spent my entire Border Patrol career in the Rio Grande Valley of Texas.

Before I discuss some potential solutions that could be employed to increase border security I want to address whether or not the border is secure. If you ask this question of the Department of Homeland Security (DHS) or senior management at Customs and Border Protection (CBP), they will tell you the border is secure. They may even point to statistics and metrics showing that the Border Patrol is 75% effective in apprehending illegal immigrants and drug smugglers.

I want to be crystal clear - the border is not secure. That is not just my opinion or the position of the NBPC. Ask any line Agent in the field and he or she will tell you that at best we apprehend 35-40% of the illegal immigrants attempting to cross. This number is even lower for drug smugglers who are much more adept at eluding capture.

How can this enormous gap exist between what the DHS tells you here in Washington and what our Agents know to be the truth in the field? Frankly, it is how you manipulate the statistics and let me give you one example. A key metric in determining our effectiveness is what is known as the "got aways". If we know from footprints or video surveillance that 20 individuals crossed the border and we ultimately catch 10 of them, then we know that 10 "got away."

When I first joined the Border Patrol if I saw 20 foot prints in the sand there was no argument – we were looking for 20 people. Today if I see 20 or more footprints in the sand a supervisor must come to my location and "verify" the number of footprints. I guess that after 13 years in the field I must have lost the ability to count.

Agents who repeatedly report groups larger than 20 face retribution. Management will either take them out of the field and assign them to processing detainees at the station or assign them to a fixed position in low volume areas as punishment. Needless to say Agents got the message and now stay below this 20 person threshold no matter the actual size of the group.

In January 2011 Border Patrol Chief Fisher came to our station. To his credit, he took questions from the assembled Agents. I expressed my concern to him about what I perceived to be CBP being more interested in border security statistics than border security, especially as it pertains to "got aways". Chief Fisher's response was "if a tree falls in the middle of the forest and there is no one there to hear it, does it make a sound?"

To be candid, I do not know whether the tree makes a sound. But I do know that if I see 20 footprints in the sand and we catch 5 illegal immigrants that there are 15 “got aways” whether or not our official statistics reflect that.

I raise this issue with you because before we can start to address our problems, we have to acknowledge the extent of them. In a moment I am going to ask you to provide Agents with more resources. I know that times are tough right now and everyone is asking for more resources. I know that it is a harder sell for me when the head of my agency is telling you that we are 75 percent effective and the border is secure.

To give you a sense of what we are dealing with, not six months after Chief Fisher made that comment to me I was involved in a fire fight with drug cartel members. We were attempting to intercept a drug shipment and we took sustained automatic gunfire from the Mexican side of the Rio Grande River. In less than 5 minutes, my partner and I fired over 600 rounds defending ourselves. When cartel members are brazenly firing automatic weapons at Federal law enforcement agents, the border is not secure ladies and gentlemen. This was in 2011 and since that time things in the Rio Grande Sector have only deteriorated.

What are some actions that this Committee can take to improve border security? Let me give you several suggestions:

- Increased manpower- Currently there are 21,370 Border Patrol Agents in this country. We do not have to double the size of the Border Patrol to gain operational control of the border. But we are, in my opinion, approximately 5,000 Agents short of where we should be. NBPC would advocate that 1,500 be sent to the northern border, which is woefully understaffed, and the remaining 3,500 positions allocated to interior enforcement.
- Supervising staffing levels- The Border Patrol is an extremely top heavy organization with far too many layers of management. The average large police department has one supervisor for every 10 officers. The Border Patrol has one supervisor for every 4 Agents. The Committee should mandate a 10:1 ratio and achieve it through attrition in the supervisory ranks. This could easily return another 1,500 Agents to the field.
- Interior Enforcement- Every night we effectively play goal line defense because all of our resources and assets are concentrated right at the border instead of having a defense in depth. You may be surprised to learn that even in a border state like Arizona we have no Agents in Phoenix. This, despite the fact that Phoenix is one of the most important illegal immigrant and narcotics transit points in the country.
- Better training- During the Bush Administration the Border Patrol’s academy training was reduced from approximately 20 weeks to as little as 54 days if you spoke Spanish. This is simply not enough time to properly train an Agent and weed out those who are not up to the challenge. The Committee should require that the Academy revert back to 20 weeks.

Again, I want to thank the Committee for the opportunity to testify and if you have any questions I would be happy to answer them to the best of my ability.

Mark Dannels  
Sheriff

Thad Smith  
Chief Deputy

## Office of the Sheriff Cochise County



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### HOMELAND SECURITY BRIEF 2015

#### Introduction

Testimony of Mr. Mark J. Dannels, Cochise County Sheriff, Arizona before the Senate Committee on Homeland Security and Governmental Affairs Hearing on "Securing the Southwest Border: Perspectives from Beyond the Beltway" on March 17<sup>th</sup>, 2015.

Chairman Johnson, Ranking Member Carper, and Members of this Committee, thank you for the invitation to speak to you today on this very important subject.

#### History of Cochise County

With eighty-three miles of international border within its jurisdiction, Cochise County plays a significant role in combating drug and human trafficking organizations and the associated violent crime which adversely affects Arizona residents and other areas throughout the United States. In 1990 the Office of National Drug Control Policy (ONDCP) designated Cochise County as a High Intensity Drug Trafficking area within southern Arizona. This designation is a direct result of overwhelming and sustained levels of illicit drug and human trafficking within Cochise County.

With 6,219 square miles, Cochise County is as large as the states of Rhode Island and Connecticut combined. The estimated population of the county in 2010 is approximately 131,346. The geography of the county consists of seven incorporated cities to include the historical town of Tombstone. Surrounded by vast areas of desolate uninhabited desert and mountainous terrain, the seven cities only represent a combined area of 215 square miles, leaving 6004 square miles of unincorporated area. These desolate areas are routinely exploited for smuggling routes by the drug/human traffickers and pose one of the greatest challenges to local law enforcements effort in establishing border security and interdiction efforts. Cochise County is the 38<sup>th</sup> largest land mass county in the United States, and is home to the United States Army base, Fort Huachuca. Throughout the history of the county ranching and farming has played a significant part in its legacy.

Unlike other border counties in Arizona, Cochise County is unique in that there are two cities in the Republic of Mexico situated on the international border within the county. The cities of Agua Prieta and Naco, with an estimated population of 80,000 and 10,000 respectively, are well know to U.S. Law Enforcement officials as staging and operational centers for one of Mexico's largest and most notorious drug cartels. The Sinaloa Cartel has long employed the use of local Mexican Drug Trafficking Organizations (DTO's) to carry out the Cartel's drug distribution and transportation into and throughout the United States.



These local DTO's also utilize their established smuggling routes in Cochise County to transport the Cartels illicit profits such as U.S. currency, firearms, and ammunition into Mexico. A large portion of the profit is used to sustain control over the corridor through the use of violence against law enforcement, rival trafficking organizations, and bribes of government officials.

The Mexican drug trafficking organizations operating in Cochise County are highly sophisticated and innovative in their transportation methods. Aside from the normal use of human backpackers (mules), clandestine tunnels, and vehicles, the trafficking organizations have resorted to the use of ultra light aircraft which cannot be detected by normal radar, cloned vehicles appearing to be law enforcement or other legitimate companies, and most recently the use of catapults which hurl bundles of marijuana into the U.S. to awaiting co-conspirators. The organizations utilize sophisticated and technical communications and counter surveillance equipment to counter law enforcements interdiction tactics and strategies. Scouts or observers are strategically placed along smuggling routes to perform counter surveillance on law enforcement and report their observations to those controlling the drug/human smuggling operation so they may avoid and elude law enforcement. The use of cell phones and sophisticated two-way radio encryptions for communications are standard equipment, as are night vision and forward looking infra-red devices.

Violence against innocent citizens, public officials, law enforcement, and rival drug/human trafficking groups in Mexico continues to escalate. Cochise County's law enforcement and private citizen fears of it spilling into the county were realized in 2010 when a longtime Cochise County resident rancher was senselessly murdered while inspecting fences on his ranch. Further complicating the concerns is the potential for foreign terrorist to employ drug/human trafficking organizations to smuggle individuals and or weapons of mass destruction into the United States through Cochise County.

The adverse affects of the drug and human trafficking organizations operating in Cochise County not only have significantly diminished the quality of life of county residents, but also placed unbearable strain upon the budgets and resources of private and government agencies in the county.

Historically speaking, illegal border crossings into the United States are well known in southern Arizona and recognized as a part of everyday life within Cochise County and throughout the southwest border. Many years ago, Cochise County citizens were not overly alarmed when they observed a handful of undocumented aliens travelling through private or public lands in search of jobs. Unfortunately, over time these groups dramatically increased in size and became more reckless, aggressive, and violent, bringing unrest and fear to the citizens living on the border. Examples of this include reckless high speed pursuits, assaults on citizens, rapes, kidnappings, murders and home invasions to steal one's private and personal possessions. It was apparent the search for the American dream was being over-shadowed by these mules, coyotes, bandits, and transnational criminals preying upon our citizens.

Having the true-life experience to live and work as a law enforcement officer/deputy and now Sheriff in Cochise County since 1984, it has been an educational lesson for me reference border security. I have witnessed the escalation of violence by these careless assailants on our citizens raising the question, who actually controls our borders? Cochise County has become known as the gateway to illegal activity for those unlawfully entering into the United States.

**Federal Government's Border Security Plan of the 90s**

In the early 1990s, the federal government prepared a plan to address the unsecure, unsafe border. At a press conference in Tucson, Arizona, a Border Patrol spokesman announced their intent to secure the populated areas of the border, specifically San Diego, Yuma and El Paso and the International Ports of Entry. These targeted areas, which I call the "Ps = Ports and Population", would be the federal government's focus points. The second half of their plan was to reroute the illegal activity/disturbances into the rural parts of the southwest border with the thought that these cartel organizations and smuggling groups would be deterred by the rugged and mountainous regions along the border.

Since the release of the plan, many changes have taken place. Specifically, Cochise County has increased their staffing of Border Patrol agents from a handful of agents to an estimated 1300 agents stationed within Cochise County. To add, an estimated 200 Custom agents working at the port of entries (Douglas and Naco) and within the Cochise County to secure and protect the estimated 83 miles of international border. Infrastructure, such as metal fencing, lightning, cameras, sensors, radars, etc. have been installed between both ports and some distance beyond bringing some needed relief to this area and those that live within. Secondary immigration checkpoints were established on routes (roadways) 20 – 40 miles north of the border. The plan has been in place for over 20 years and the following are some thoughts regarding the plan:

- Reduction in illegal activity between the protected areas (ports)
- Decrease in larger groups of undocumented aliens between the protected areas (ports)
- Increase in illegal activity outside the protected areas (ports)
- Fear/Frustration increased in rural Cochise County/Southwest Border
- Ranch and Farm lands damaged due to increased illegal activity
- Property (fencing, livestock, waterlines, etc.) damaged
- Burglaries/Thefts increased in rural Cochise County/Southwest Border
- Violent Crimes increased i.e. Homicides, Assaults, Rapes, Drug and Human Smuggling, etc. in rural Cochise County/Southwest Border
- Transnational Cartels/Smuggling Organizations controlled and set up smuggling routes in rural Cochise County/Southwest Border
- Lack of Border Patrol Agents directly on border but north of border
- Secondary checkpoints became international ports within communities resulting in disturbances/illegal activity during all hours of the day or night
- Lack of Re-Definition to the plan of the 90s (time erased history)
- Loss of recreational land use due to fear of criminal activity
- Economic decline (Cochise County largest decrease in population)
- Legacy Ranches being sold
- Lack of Federally elected leaders to address unsecure border/fears creating a lack of trust and anger by citizens
- Questionable consequences by federal government by those committing border crimes
- Undue pressure on local law enforcement/Sheriffs to address issues, fear, and consequences for those committing crimes
- Lack of funding for local law enforcement/criminal justice system/corrections in order to address border crimes at the local level due to federal government lack of intervention

- Border Security shall be a Mandate, not a Discretionary program
- Border Security v. Immigration Reform (two different programs not to be blended)
- Lack of Trust and Confidence in Federal Government = Border Patrol as arm of Federal Government

#### Action-Based Solutions Local Government

Local Solutions and Programs are no longer a thought, but a reality for bringing relief to our citizens who consciously choose to live near our borders. No better example of the importance of local law enforcement during a national crisis was the terrorist attack on September 11, 2001. First responders from local police and fire were the first on scene to address this horrific threat. Local law enforcement is best suited to best understand community needs and solutions based on the expectations of their citizens. Community policing begins and succeeds at the local level first.

As the Sheriff of Cochise County, I felt it was my elected and statutory duty (oath of office to support the United States Constitution and the Arizona Constitution) to protect and secure the Freedoms and Liberties of my citizens, with or without the help of our federal law enforcement partners/policy makers. No longer a debate by those that live in the rural parts of the southwest border, the rural parts of the Southwest Border are NOT secure and are vulnerable for ANY type of transnational criminal activity.

Working with limited budgets and staffing, sheriffs along the southwest border struggle each and every day to find ways to enhance the quality of life/safety for those they serve and bring a general sense of deterrence for those choosing our border as a venue to promote their criminal enterprises. The following bullet points are action-driven solutions implemented in hopes of bringing some relief and sense of security for those living in Cochise County:

- Balanced Community Policing (Education, Prevention, Enforcement)
- Transparency + Time = Community Trust
- Collaborated Efforts by all 3-levels of Government
- Law and Order Partnership between Sheriff and County Attorney
- Private and Public Funding donations/grants to purchase upgraded equipment/communications
- Installation of New Radios/Towers/Consoles/Microwave
- Portable Radios to Citizens/Ranchers/Farmers/Schools
- Interoperability/Intelligence Sharing at all 3-levels
- Regional Application for Law Enforcement
- Financial Interdiction Unit
- Regional Border Team by Sheriff supported by Border Patrol, ICE, U.S. Forest
- Ranch Advisory Team
- Ranch Patrol
- Consequence Driven Prosecution (all 3-levels)
- Local Trail-Cameras, Sensors, ATVs, Thermal Vehicle, Off-Road Vehicle, etc..
- Factual Situational Awareness for Media, Elected Officials, America
- Quarterly Law Enforcement Leadership Meetings
- Community Outreach Unit
- Community Meet & Greets within Communities

- Aviation Program (Helicopter & Drone)
- Positive-Interactive Use of Media and Social Media

#### **Recommendations Federal Government**

The Federal Government (elected and policy makers) has been slow to react to the voices and concerns of those living on the southwest border. Cochise County and other counties along the border have become VIP attractions, venues for those seeking to make a difference or promising change only to become another faded high-hope. The following comprehensive recommendations are directly linked to our federal leaders:

- Re-define the plan of the 90s and build upon successes
- Political-Will to make Border Security a Mandated Program
- Border Security First, Immigration Reform Second
- Maximize Allocated Resources such as Staffing (only 43% of Border Agents in the Tucson Sector are assigned on the border)
- Support and Embrace First-line Agents that work the border regions, they have a dangerous job and it's no secret that their frustration is high based on the unknown complexities reference their assignments, they have great ideas to share
- Secondary Checkpoints only after Primary border interdiction is satisfied by stakeholders
- Quality in Life/Citizens living on border supported by Sheriffs and State Governors regarding improved security/safety
- Funding supplement for Local Law Enforcement/Prosecution/Detention/Criminal Justice in support of border crimes
- Continued Funding and Support for Stone Garden Program
- Empowerment with action to Border Patrol Leadership/PACs (currently Cochise County has 3-dedicated and solution-driven leaders that work well with local law enforcement)
- Enhanced Funding for Regional Communication and Interoperability with local law enforcement
- Cultural/Quality in Service Training for Border Patrol Agents working in rural counties

#### **Summary**

Our local efforts have proven to be beneficial in bringing over-due solutions to an unsecure border that has become a discretionary program by those federally elected leaders and policy makers that have been entrusted to protect our freedoms and liberties. As a Sheriff elected by the good people of my county, my biggest fear is another loss of life to one of my citizens and/or law enforcement officers/agents contributed to a border that is NOT secure. One would hope the priority of securing our border doesn't become just about a price tag and/or political posturing, but rather the legal and moral requirement to safeguard all of America, which so many heroic Americans have already paid the ultimate price for.

Today's opportunity to address this group instills fresh hope that our voice does matter and on behalf of the citizens of Cochise County, Arizona and beyond, we hope you won't forget us and will do your Constitutional mandate to bring positive change to an over-due vulnerable situation.

I will leave each one of you with an open invitation to visit Cochise County along with a personal-guided tour and visit with our citizens to hear/see first-hand America's true rural border.

Again, thank you very much for the opportunity to share this information with you. I will be happy to answer any questions you may have.

Respectfully Submitted,

Sheriff Mark J. Dannels

Attachments

- a. Sheriff Mark J. Dannels Biography
- b. Arizona Sheriffs Letter on Border Security



**Written Testimony Submitted by Howard G. Buffett, Chairman and CEO of the Howard G. Buffett Foundation, to the Senate Homeland Security and Government Affairs Committee  
Hearing on "Securing the Southwest Border: Perspectives from Beyond the Beltway"**

March 17, 2015

Chairman Johnson, Ranking Member Carper and Members of the Committee: thank you for the opportunity to testify today. Let me start by saying this: our border is not secure. This is based on my experiences as a rancher and a farmer with property on and near the Arizona border; my time serving on the Sheriff's Assist Team for Cochise County under Sheriff Dannels; my law enforcement perspective as an Undersheriff for Macon County, Illinois; and my experience as a philanthropist who has invested more than \$150 million since 2005 on border-related issues in the United States, Mexico, and Central America.

Our insecure border is contributing to a humanitarian crisis. While most of my philanthropic efforts in Mexico and Central America work to improve the lives of people in their home countries and reduce incentives to cross, I strongly believe that border security must come first and must be addressed separately from other important and worthy investments in immigration reform and efforts to create economic opportunities in countries of origin. I would like to share with you today some of the experiences that have shaped this perspective, as well as my recommendations for ways to secure our border.

**Background**

*Ranching Perspective*

The Howard G. Buffett Foundation owns 2,375 acres of ranch land located in Cochise County, Arizona. Our property is on the border, and includes a residence located 300 yards from the U.S.-Mexico border fence. Each month, thousands of undocumented migrants and drug smugglers cross the eighty-three miles of international border the county shares with Mexico. I have personally witnessed evidence of regular crossings through our property and fence line. Area ranchers are experiencing challenges of great magnitude – our fences are cut, our cattle put at risk, our water sources damaged and our properties littered. We must also take extra precautions to ensure our personal safety.

Regular fence-cutting is particularly worrisome to ranchers, given its impact on their livelihoods. Last month, I found our new fence cut in three places, approximately 100 feet apart. Two of the fence cuts were through all four fence wires, suggesting the individuals walking through were carrying heavy loads of drugs and could not step over the lower wires. A cut fence is a financial burden for ranchers given the cost of continuously mending fences, the hindrance to successful breeding due to mixing of cattle from different pastures, and the productivity lost during labor-intensive roundups. Cut fences also allow livestock to roam open roads or even cross the border into Mexico, creating liability concerns.

One of our neighbors is fellow rancher John Ladd, whose family has owned property in Cochise County for 118 years. The property shares a ten and a half mile border with Mexico that includes a metal fence erected by the Federal Government. Over the course of two and a half years, John has witnessed smugglers using chop saws to cut large holes in the fence, allowing them to drive forty-six trucks loaded with drugs across his property. Only one of these trucks was apprehended after it broke down and was abandoned by smugglers. John's challenges illustrate broader problems associated with a border that is not secure: regular traffic from criminal elements put residents at risk and diminish property values in border towns. The value of John's property is a case in point. In 2012, the Walter D. Armer & Associates appraiser noted in his report that "The proximity to the Mexico border and illegal immigration and drug smuggling problems that go with it is a major drawback for many investors." Our Foundation was able to purchase a legacy ranch at a quarter of the asking price because it had been on the market for years and there are few buyers looking for border property.

The border patrol also plays a role in undermining owners' property values through eminent domain – and in some cases, informal overreach. We have experienced on our own ranch, and heard similar stories from other ranchers, when agents create roads on clearly-marked ranch property. We recently lost a hill on our property to the federal government through eminent domain so that a communications tower can be moved from a neighboring hill a few hundred yards away. These are the kinds of challenges property owners face when they live on the border.

#### *Farming Perspective*

In addition to our land on the border, our Foundation owns 1,575 acres of farm land in Willcox, Arizona (also in Cochise County), located fifty miles' north of the border. On our property we have regular visits from border patrol agents tracking drug smugglers. Last year, a smuggler was chased into our corn fields, carrying with him 600 pounds of marijuana. It took five hours for border patrol agents to apprehend him. Individuals making their way from the border to Interstate 10 also leave behind their trash on Arizona farmlands—including soiled diapers, plastic bottles, food, cans, burlap bags and abandoned vehicles. This places an extra burden on area farmers to clean up the trash left after these border breaches, to say nothing of the personal safety issues of having individuals who are breaking the law regularly traversing our property, at times coming within 100 feet of our home.

#### *Public Safety Perspective*

I serve on the Sheriff's Assist Team in Cochise County, Arizona, as an Undersheriff for Macon County, Illinois, and as an Auxiliary Deputy Sheriff in Macon and Shelby counties in Illinois. These roles have provided me with a law enforcement perspective and front-line exposure to the transnational criminal activity and security threats associated with an insecure border. I have seen the results of drug smugglers who have breached fences and re-welded steel to disguise their crossing, and I have seen the effects of the increase in drugs brought into the U.S., especially heroin and meth. I have also witnessed the limited capacity of border agents to respond to these challenges. On a tactical mission with the Cochise County Sheriff's Office one night, using surveillance equipment covering approximately 20 miles along the border, we spent five hours monitoring the border fence using an infrared scope, but saw only one border patrol truck. We also saw a microlight aircraft returning to Mexico after what was likely a drug drop, a common way that drugs are being brought into the U.S. It is a way to circumvent patrol agents and drop drugs very close to the interstate; once they are in a vehicle and on the interstate, interdiction is much less likely.

The cartels have better surveillance and better access to manpower than ever before. Opposite our ranch on the Mexico side is a hill approximately 400 feet above ground elevation. At the top of the hill is a clearly visible post, manned by a spotter who can readily see the border fence and any border patrol agents or law enforcement for many miles. After Operation Gatekeeper was implemented in the mid-1990s, crossing routes were forced into more rural areas and difficult terrain like Cochise County, prompting the cartels to get into the lucrative human trafficking business. Today, based on interviews of apprehended individuals, we know that the cartels are also using people who are crossing into the U.S. in search of a better life as drug mules in lieu of payment for assistance with crossing routes. The consequences for these individuals who are caught are much higher than those who pay for their assistance with cash but the cartel does not always provide individuals with an option.

Local law enforcement agencies are on the front lines of the fight for improved border security and can be a valuable resource to address the gaps in border patrol capacity if there was better coordination from federal agencies and if there was a desire to do so.

#### *Humanitarian Perspective*

Over the last decade I have made numerous trips accompanying border patrol agents on the border, visiting migration centers and DHS holding facilities, meeting farm workers, and observing migrants making their way north via the “Death Train.” The lack of a secure border is contributing to a humanitarian crisis both in the U.S. and abroad.

In recent years, we have seen several key trends in migration patterns, which highlight the root causes driving thousands of migrants to make the perilous journey to the U.S., including violence at home and lack of economic opportunities in their home countries, as well as incentives in our own system. These trends in particular are driving the increase in the number of unaccompanied minors coming from Central America, which has doubled each year since 2011.

Operation Gatekeeper increased border security at main crossing centers, which has funneled migrants to more extreme and dangerous crossing points.<sup>1</sup> Crossing treacherous desert areas exposes migrants to heat exhaustion and dehydration. More than 300 people died attempting to reach the U.S.-Mexico border in FY2014.<sup>2</sup> I have witnessed first-hand the consequences of these dangerous conditions. Our Foundation provided a grant to fund an International GIS Initiative in Pima County to create a geographic information system that links data from missing person reports to post-mortem reports to hopefully identify the individuals who die in the desert so that their families can access the information. We should not be satisfied knowing that our insecure border encourages these dangerous crossings.

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<sup>1</sup> <http://www.law.cuny.edu/legal-writing/forum/immigration-law-essays/wolf.html>

<sup>2</sup> [http://www.cbp.gov/sites/default/files/documents/BP%20Southwest%20Border%20Sector%20Deaths%20FY1998%20-%20FY2014\\_0.pdf](http://www.cbp.gov/sites/default/files/documents/BP%20Southwest%20Border%20Sector%20Deaths%20FY1998%20-%20FY2014_0.pdf)



Difficult terrain also means that border crossers are increasingly looking to drug smugglers for navigation assistance. Migrants are vulnerable to kidnapping, murder and sexual assault at the hands of smugglers. This is especially concerning given the evolving demographics of migrants. Unaccompanied minors are arriving at the U.S. border in unprecedented numbers, and almost half of the children arriving are girls. An Amnesty International report indicates that as many as six in ten migrant women and girls are raped during the journey.<sup>3</sup> Recognizing the increased percentage of migrants that are unaccompanied children and the horrors children experience during their journey, our Foundation has invested millions of dollars in social services, legal assistance, centers and facilities, and reintegration services for deported children to reduce the likelihood of remigration.

Lax immigration enforcement policies create incentives to cross. Policies that defer deportations or provide amnesty create new surges of illegal migrants to the U.S. border. Regardless of the legal reality, there is clearly a perception in Central American countries that children and illegal migrants will be able to stay in the U.S. because of impending policies. We need to eliminate these incentives if we are to secure the border and stop contributing to the humanitarian issues an insecure border creates.

#### *Testing New Approaches*

Our Foundation has invested nearly \$124 million over the last ten years to address the “push” factors driving migrants from Central America and Mexico, including efforts to support legal migration for farmworkers, and reduce illegal migration by creating better economic opportunities in countries of origin. These include:

- Testing a new labor recruitment model in partnership with Costco and the United Farm Workers to prevent fraudulent recruiting practices and safe working environments for farmworkers in Mexico and the U.S.;
- Creating a model for community-based gang intervention to disrupt gang-related violence in El Salvador;
- Supporting additional capacity for the Florence Immigration and Refugee Rights Project to address the needs of children and adults who are awaiting immigration processing;
- Advising on the Mexican government’s migration plan, including improved government services for migrant workers and improved oversight mechanisms;
- Piloting a model for H-2A workers to be safely recruited in Mexico and connected with U.S. farmers;
- Providing legal services and support to unaccompanied minors being deported back to Guatemala to safely return and reduce the likelihood of remigration;
- Developing programs to help migrants and minors understand their rights and the dangers of illegal migration;
- Funding three migrant centers in Mexico and supporting a community center for migrant support in Mexico;
- Investing in numerous efforts to improve the productivity and incomes of smallholder farmers in Central America to reduce incentives to cross to the U.S.

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<sup>3</sup> <http://blog.amnestyusa.org/americas/most-dangerous-journey-what-central-american-migrants-face-when-they-try-to-cross-the-border/>

We are also investing directly in improved border security in partnership with the Cochise County Sheriff's office. To date, our Foundation has committed \$22 million to upgrade communication networks; add surveillance equipment; improve officer protection equipment; increase canine support; enhance training facilities; augment search and recovery air support; and add human capacity to create a specialized investigative team focused on human trafficking and drug smuggling.

Our Foundation is also partnering with area ranchers and federal and state agencies to restore healthy grasslands one mile deep and 38 miles along the border. We expect to put more than \$6 million into this effort in the coming years with a goal to demonstrate not only the environmental benefits to removing invasive species of plants like mesquite but to also enhance enforcement visibility along the border, making it more difficult to cross.

We consider our philanthropic support to be essentially risk capital testing new ideas and potential solutions. For change to come at scale, it must be led by sound government policy and participation.

### **Proposed Solutions**

One thing I have learned from our Foundation's work in over 80 countries is that it does little to identify a problem if you are not able to also propose a solution. Here are a few ideas I present for the Committee's consideration to enhance the security of our border:

#### **1) Increase Enforcement Capacity**

We need more human assets on our border but adding more border patrol agents to the current system is not the right answer. There is an opportunity to better utilize the agents we already have, increase technology support assets, strategically use appropriate military assets, and rethink some of the policies within Customs and Border Patrol.

Currently, agents are disproportionately positioned at checkpoints miles north of the border waiting to catch migrants and drug smugglers who are not apprehended at their initial crossing point – in part due to the Defense in Depth strategy. The Tucson Border Patrol station in fiscal year 2011 scheduled only 43 percent of agent workdays to border zones.<sup>4</sup> Even with the federal government's increased use of border cameras and other surveillance technology, many remote border areas are still insecure due to limited staffing and communications mechanisms; apprehensions are also limited by processing capacities. There are many areas without fencing and there are areas that can only be reached by horse patrol. The effectiveness of border patrol agents could be increased by moving away from this policy and more strategically placing agents at locations directly on the border, thus minimizing agent response times. More agents should be positioned at the smaller checkpoints that are too often closed because of a lack of manpower. With additional resource support and through cooperative agreements, local law enforcement could assist with the Defense in Depth strategy to relieve agents to be in closer proximity to the border.

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<sup>4</sup> <http://www.gao.gov/assets/660/650730.pdf>

We also have an opportunity to engage appropriate military assets without militarizing the border. I have traveled to 135 countries and seen every country on the African continent, including active conflict zones. Almost every country in the world protects their borders with their military. Border security is a national security issue and requires that we engage all of our assets to secure our border. Members of Congress have already recommended the deployment of National Guard troops. I urge Congress to also consider expanding the Coast Guard's mandate to operate on land. They are trained to enforce our borders, are readily available and can staff-up based on a command structure that is more appropriate for our border.

We can also do more with surplus technology and alternative resources. Aerostats provided to Border Patrol from the Department of Defense can spot vehicles attempting to circumvent check points during pick-ups and drop-offs. The strength of this approach was proven in McAllen, Texas, where aerostats acted as additional eyes for border agents and immediately increased the number of apprehensions. Helicopters and canines are extremely effective assets for detection and apprehension. Until the border is secure, agents should also be supported by additional immigration courts at border facilities for real-time judicial processing. There are currently seven Executive Office for Immigration Review Courts at the border in California and Texas, and none at Arizona's border.<sup>5</sup>

Customs and Border Patrol human resources policies also need to be reviewed. Currently, border patrol compensation and retirement opportunities are linked to the size (by agent headcount) of the station. Seasoned patrol-agents-in-charge (PAICs) who would prefer to remain at smaller but tactically-important stations must move to larger stations to qualify for higher compensation and better benefits. There should instead be incentives to keep the best PAICs at their station of choice, particularly when that station is strategically important to border security. PAICs should also be provided with greater decision-making authority to take advantage of their extensive on-the-ground experiences and relationships.

None of these measures are effective if the policy is "catch and release." There is an additional burden placed on the state to prosecute criminals who commit immigration violations when federal prosecutors will not prosecute.

## **2) Increased Pressure on Mexico to Secure Its Borders**

Addressing the challenges of safety and security from both sides of the border is the most efficient way to achieve operational control. We've seen this prove to be an effective policy with Colombia, and we should pursue a similar policy with Mexico. We need to put a plan in place that shuts down the in-flow of illegal drugs entering the country through sufficient manpower on both sides of the border. Mexico must also secure its southern border.

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<sup>5</sup> <http://www.justice.gov/eoir/sibpages/ICadr.htm>

In 2008, President Bush established the Merida Initiative to facilitate cross-border cooperation on mutual interests of public safety and transnational crime. The U.S. should better engage Mexico under this initiative to coordinate law enforcement, judiciaries, and military manpower to target transnational criminal organizations, gangs, human traffickers, terrorists, and other threats to shared security, and promote a national plan for migrants, including the expansion of economic opportunity. This requires a new level of trust and investment between the two countries, and while that is not without risk, it is critical to the security of our border.

### 3) Effective Cooperation with Local Authorities

Border states are uniquely positioned at the intersection of local, national and international interests. Integrating state and local governments into the planning and implementation of a border security strategy is important for several reasons:

- These entities are more familiar with on-the-ground realities at the border and provide invaluable knowledge about local culture, customs, geography, politics and threats to the community.
- Local governments enforce housing violations and police departments recover stolen cars, often cutting off smuggling and drug-trade routes.
- State and local governments incur significant costs related to undocumented migration and thus should have an opportunity to engage in decision-making.

In addition to engaging local entities from a policy perspective, providing funding for local and county law enforcement agencies is integral to success at the border. Local law enforcement personnel are frequently lifelong residents of the areas they patrol, while border agents are transitive. The continual movement of border patrol agents is not conducive to the development of local knowledge and relationships.

Operation Stonegarden (OPSG) provides funding to designated localities to enhance cooperation and coordination between federal, state, local, tribal, and territorial law enforcement agencies in a joint mission to secure the U.S. borders.<sup>6</sup> Programs like OPSG that improve local law enforcement's capability to prevent, protect against, and respond to border security issues, and encourage cooperation between local and federal levels, should be expanded.

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<sup>6</sup> <http://www.homelandsecuritygrants.info/GrantDetails.aspx?gid=21875>

#### 4) Engaging Private Citizens and the Rancher Community

Private citizens in border communities are disproportionately affected by lack of border security and resulting criminal activity, especially ranchers who experience property damage and lose cattle. These challenges are exacerbated by miscommunications between ranchers and border patrol agents. Proposed border reform policies should engage ranchers and land-owners as partners in decision-making, and should set consistent guidelines for the treatment of ranchers by border patrol agencies, with clear penalties for agents who violate policy.

Clear communication is needed to help ranchers fully understand federal laws such as the “twenty-five mile” statute, which allows border agents to enforce immigration laws on private lands but not dwellings (agents must obtain a search warrant or occupant consent to search a home). In turn, ranchers are responsible for understanding the constraints of border patrol agents--economic, manpower or otherwise--and acting as forward-looking partners during stakeholder meetings. Finally, recognizing the effects of property damage to ranchers’ livelihoods, simple and quick reimbursement policies are needed for landowners who experience property damage as a result of federal enforcement efforts.

#### 5) Eliminating Incentives to Cross

It is critical that the efforts above be complemented by addressing the “pull factors” of migration. In 2013, Immigration and Customs Enforcement (ICE) removed 198,000 individuals from the U.S. with no legal status and prior criminal convictions.<sup>7</sup> At the local level, it is clear that the more common practice is to issue a “Notice to Appear” and release apprehended individuals into the community. This “catch and release” practice and the resulting perception that some illegal migrants could be getting a free pass into the U.S. could lead to even more attempts to cross the border. Eliminating loopholes within our system and enforcing a zero-tolerance policy is critical for removing incentives for illegal crossings.

#### Conclusion

We can secure our border by addressing the key practical challenges, including increasing enforcement capacity, furthering cooperation with Mexico, improving coordination among local, state and federal agencies, including local communities. On the policy front, we must strive for zero tolerance. All of these efforts should not get sidetracked by the important but separate considerations of immigration reform and Central American economic development initiatives.

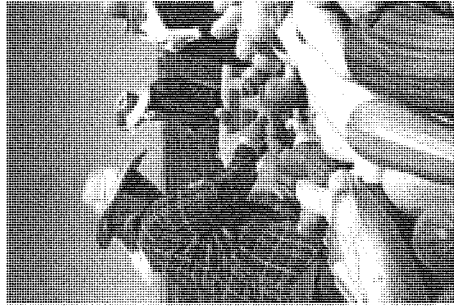
Chairman Johnson, Ranking Member Carper and Members of the Subcommittee, thank you for the opportunity to testify today. I have included here for the Committee’s reference my full biography as well as additional information about our Foundation’s related investments in the U.S., Mexico and Central America. I look forward to answering any questions.

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<sup>7</sup> [http://www.dhs.gov/sites/default/files/publications/ois\\_enforcement\\_ar\\_2013.pdf](http://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2013.pdf)

*Attachment to the Written Testimony Submitted by Howard G. Buffett to the Senate Homeland Security and Government Affairs Committee Hearing on "Securing the Southwest Border: Perspectives from Beyond the Beltway"*

**Summary of Investments by the Howard G. Buffett Foundation to Reduce Illegal Migration, Improve Livelihoods and Enhance Food Security in the U.S. and Central America**



THE HOWARD G.  
**BUFFETT**  
FOUNDATION

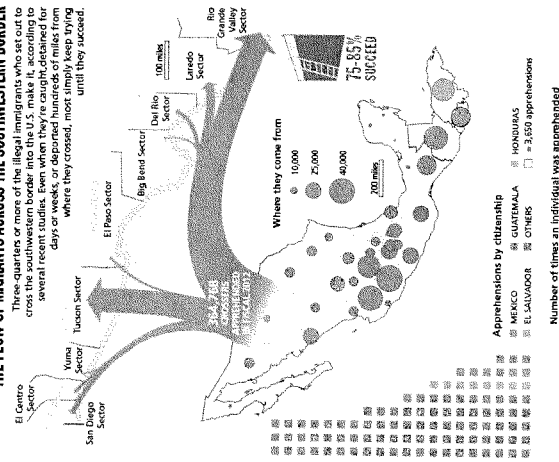
March 17, 2015

# Country Origins of Illegal Migrants to the U.S.

An estimated 11.5 million people in the U.S. are undocumented – 58% from Mexico, 15% from Central America.<sup>1</sup> An estimated 1.5 to 2.5 million more cross the Mexican border each year, most successfully.<sup>2</sup>

## THE FLOW OF MIGRANTS ACROSS THE SOUTHWESTERN BORDER

Three-quarters or more of the illegal immigrants who set out to cross the southwestern border into the U.S. make it, according to several recent studies. They succeed in crossing the border in days or weeks, or deported hundreds of miles from where they crossed, most simply keep trying until they succeed.



Source:  
Department of Homeland Security, Homeland Security Research Series, Council of Foreign Relations, National Research Council  
KEDI MATHIE REPUBLIC

- 75% to 85% of illegal crossers succeed<sup>3</sup>
- People who are caught often try to cross again<sup>3</sup>
- This trend continues despite: a 100% increase in border agents since 2002;<sup>4</sup> a 145% increase in the Border Patrol budget since 2002;<sup>4</sup> and a 2.7x increase in deportations over the same time period<sup>5</sup>

1 Department of Homeland Security, "Estimates of Unauthorized Immigrant Population Residing in the United States," [http://www.dhs.gov/stet/default/files/publications/ois\\_ill\\_pe\\_2012\\_2.pdf](http://www.dhs.gov/stet/default/files/publications/ois_ill_pe_2012_2.pdf)  
2 <http://csl.uscd.edu/75-IllegalImmigration-2011-statistics>  
3 <http://csl.uscd.edu/75-IllegalImmigration-2011-statistics>  
4 U.S. Customs & Border Patrol website  
5 Department of Homeland Security Yearbook of Immigration Statistics, 2013

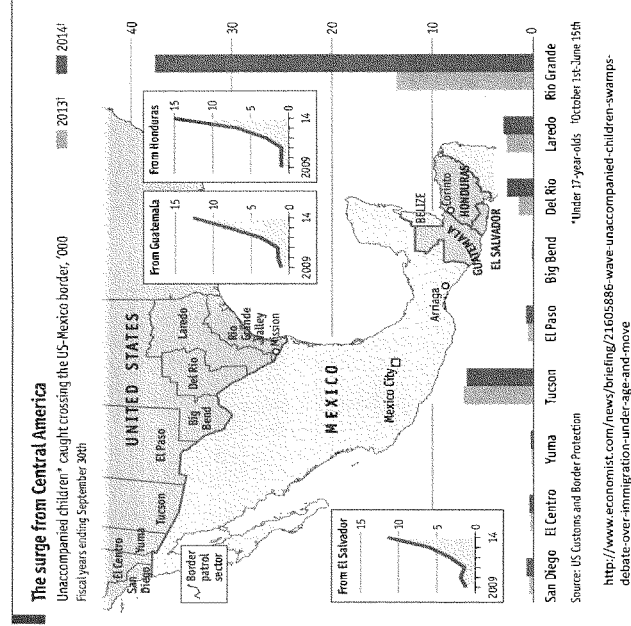
# Changing Demographics of Apprehensions

More unaccompanied children, more migrants from Central America, and fewer Mexicans are being apprehended at the border since 2004.<sup>2</sup>

- The number of unaccompanied minors coming from Central America has doubled each year since 2011.<sup>1</sup>
- The number of Mexicans apprehended at the border has dropped 63% between 2004 and 2013.<sup>2</sup>
- Overall, individuals from El Salvador, Guatemala, and Honduras apprehended at the border has increased 214% between 2004 and 2013.<sup>2</sup>

1. Pew Hispanic Research Trends Project <http://www.pewhispanic.org/2012/04/23/net-migration-from-mexico-to-the-u-s/>

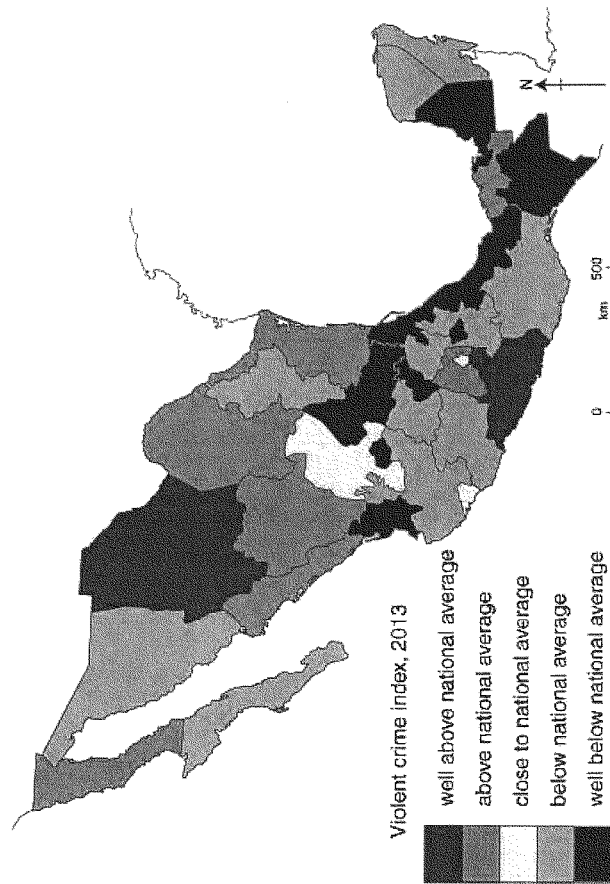
2. Department of Homeland Security Yearbook of Immigration Statistics 2013.





# Violent Crime Across the Border

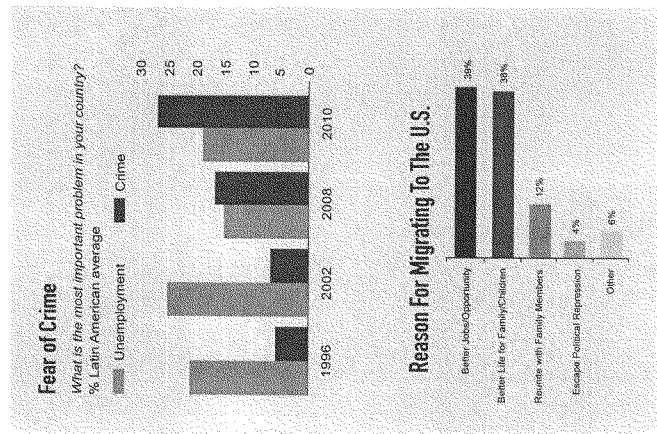
Four of the five Mexican states sharing the border with the U.S. have violent crime rates above or well above the national average.



Source: The Consejo Ciudadano para la Seguridad Pública y la Justicia Penal A.C., a Mexican non-profit, has published an interesting report looking at the levels of violent crime in Mexico in 2013: <http://www.seguridadjusticiapaz.org.mx/sala-de-prensa/957-opra-es-el-municipio-mas-violento-de-mexico>

# Why Immigrants Come

Lack of economic opportunities and violent crime are causing record numbers of children and families to come to the U.S.<sup>1</sup>



<sup>1</sup> Latinobarometro (top left); Latino Decisions/NALED/ANEP poll of undocumented Latinos: March 2013 (bottom left); <http://blog.worldvisionyouth.org/2013/06/18/infographic-peace/>; <http://www.unicef.org/press/2013/06/18/infographic-peace/>

## Financial Incentives

Many immigrants send money back to family members in their home countries. These remittances play an important role in the livelihoods of the individuals who receive them and the economies of the receiving countries.<sup>1,2</sup>

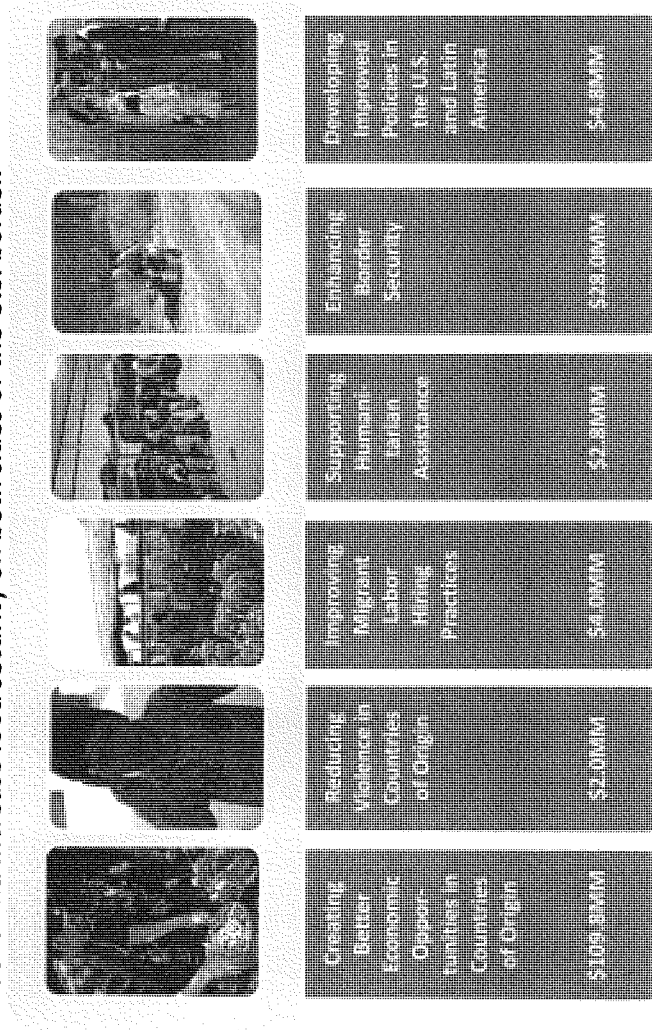
|             | Remittances<br>as a Percent of<br>GDP (2013). | Remittances<br>Received<br>(2013). | US Official<br>Development<br>Assistance. <sup>2</sup><br>(2012) |
|-------------|-----------------------------------------------|------------------------------------|------------------------------------------------------------------|
| Honduras    | 16.9%                                         | \$3.1 B                            | \$55 MM                                                          |
| El Salvador | 16.4%                                         | \$4.0 B                            | \$161 MM                                                         |
| Guatemala   | 10.0%                                         | \$5.1 B                            | \$91 MM                                                          |
| Nicaragua   | 9.6%                                          | \$1.2 B                            | \$45 MM                                                          |
| Mexico      | 1.8%                                          | \$21.6 B                           | \$212 MM                                                         |

1 The World Bank Remittances  
2 USAID website for ODA data



## Investment Priorities

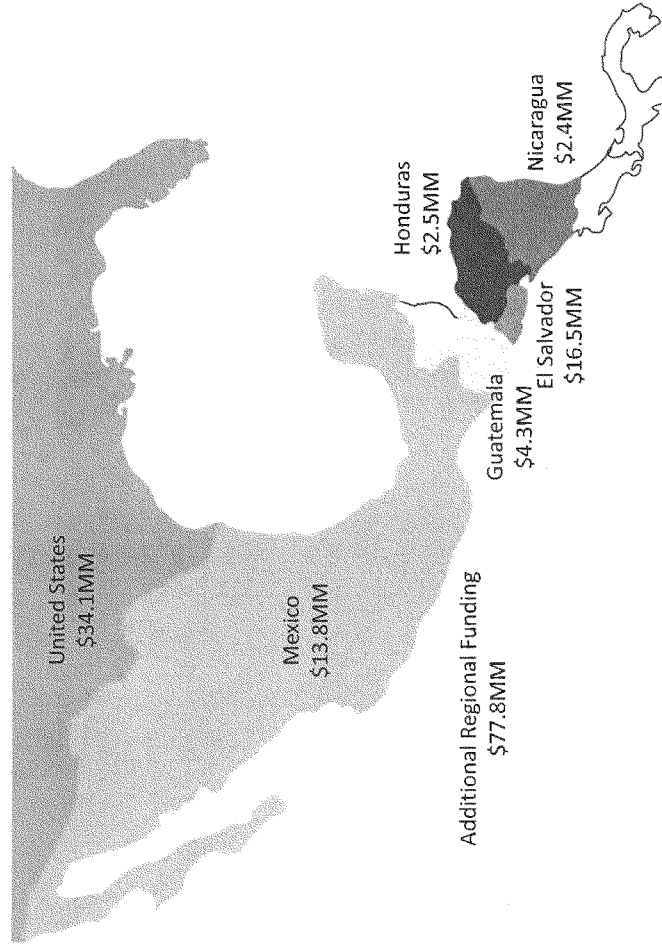
HGBF has identified six categories to invest in to reduce illegal migration, improve livelihoods and increase food security on both sides of the U.S. border.



***\$151.4MM invested to date***

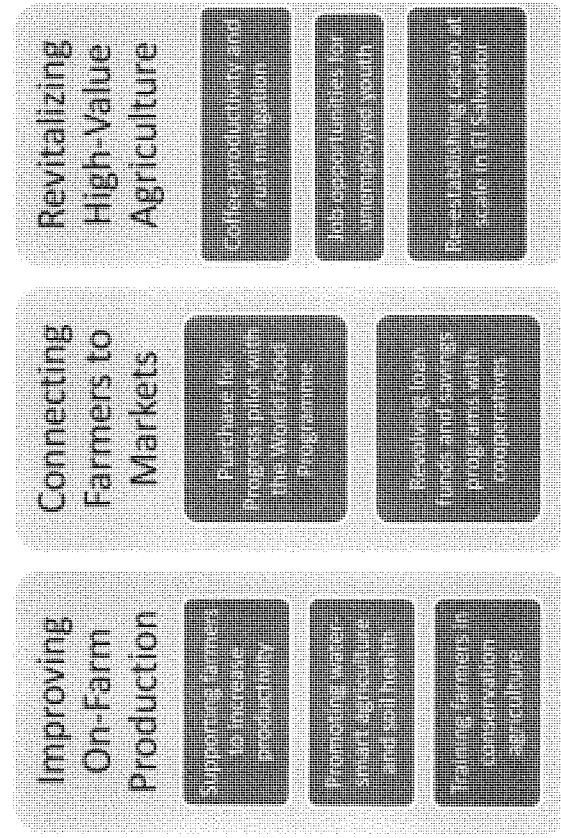
## Geographic Priorities

HGBF has invested \$151.4 million in the U.S., Mexico, and Central America since 2004.



# Economic Opportunities in Countries of Origin

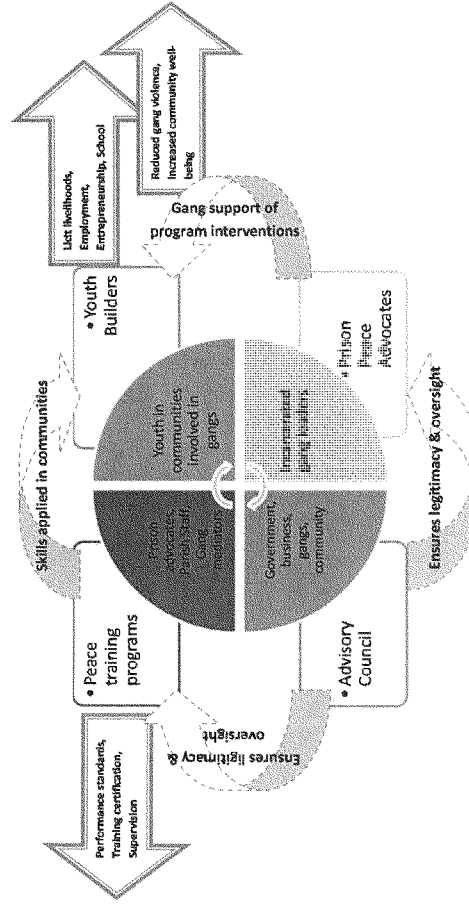
Reducing migration incentives by investing to improve economic opportunities at home



# Reducing Violence in Countries of Origin

Investing to mitigate violence in home countries to reduce incentives for local populations to migrate to the U.S.

- 70% of child migrants from El Salvador are personally affected by violence from gangs
- To reduce the number of children needing to flee violence, HGBF is funding the modeling of a successful U.S. gang intervention program for the first time in El Salvador





# Economic Opportunity & Reducing Violence Grants

| Title                                                      | Partner                                       | Start Date | End Date  | Funding Year | Total Funding Commitment |
|------------------------------------------------------------|-----------------------------------------------|------------|-----------|--------------|--------------------------|
| Action Against Hunger                                      | Catholic Relief Services                      |            |           | 2007         | \$361,000                |
| Agriculture for Basic Needs                                | Catholic Relief Services                      | 01-Jan-09  | 30-Nov-12 | 2008         | \$15,150,854             |
| Agriculture for Basic Needs - Mexico                       | Catholic Relief Services                      | 01-Apr-11  | 31-Dec-15 | 2010         | \$2,554,619              |
| Breaking the Cycle of Malnutrition                         | Catholic Relief Services                      | 01-Jan-07  | 31-Mar-11 | 2006         | \$1,805,703              |
| Buffett Fellowship (Education & Empowerment)               | Florence Immigrant Rights Project             | 01-Sep-06  | 31-Aug-08 | 2006         | \$76,800                 |
| Campesinos for Progress                                    | Catholic Relief Services                      | 01-Nov-09  | 31-Oct-12 | 2009         | \$749,995                |
| Coffee Assistance for Enhanced Livelihoods                 | Catholic Relief Services                      | 01-Oct-08  | 30-Sep-11 | 2008         | \$8,493,623              |
| Diagnostics for a National Cocoa Initiative in El Salvador | Catholic Relief Services                      | 01-Nov-12  | 30-Jul-13 | 2012         | \$150,771                |
| Economic Success for Rural Women in Nicaragua              | Catholic Relief Services                      | 01-Jan-08  | 30-Jun-10 | 2007         | \$233,710                |
| El Salvador National Cocoa Initiative                      | Catholic Relief Services                      | 01-Oct-14  | 30-Sep-19 | 2014         | \$10,000,000             |
| From Coffee to Chocolate                                   | Catholic Relief Services                      | 01-Nov-13  | 31-Oct-17 | 2013         | \$1,652,541              |
| Getting to Great                                           | Catholic Relief Services                      | 01-Jun-12  | 31-May-15 | 2012         | \$1,079,670              |
| Global Water Initiative - Central America                  | Catholic Relief Services                      | 31-Dec-07  | 31-Dec-17 | 2007         | \$24,172,948             |
| Guatemala - Nutritional Early Warning System               | World Vision                                  | 05-Jan-05  | 08-Feb-05 | 2005         | \$50,000                 |
| Guatemala: Equipment Donation                              | United Nations World Food Programme           | 25-Jan-11  | 31-Jul-11 | 2011         | \$198,246                |
| Honduras - Nutritional Early Warning System                | World Vision                                  | 05-Jan-05  | 08-Feb-05 | 2005         | \$50,000                 |
| Local Production of Maize for Vitacereal in Guatemala      | United Nations World Food Programme           | 01-Mar-08  | 30-Jun-09 | 2007         | \$469,688                |
| Mexico Pilot Program                                       | Catholic Relief Services/Lindsay Corporation  | 31-Oct-15  | 01-Nov-17 | 2015         | \$2,000,000 (committed)  |
| Nicaragua - Mother & Child Health Program                  | United Nations World Food Programme           | 11-Jan-08  | 31-Dec-08 | 2007         | \$2,000,000              |
| Pre-Feasibility Study in Nicaragua & Guatemala             | Food First/Institute for Food and Development | 4/10/2009  | 6/30/2009 | 2009         | \$15,000                 |

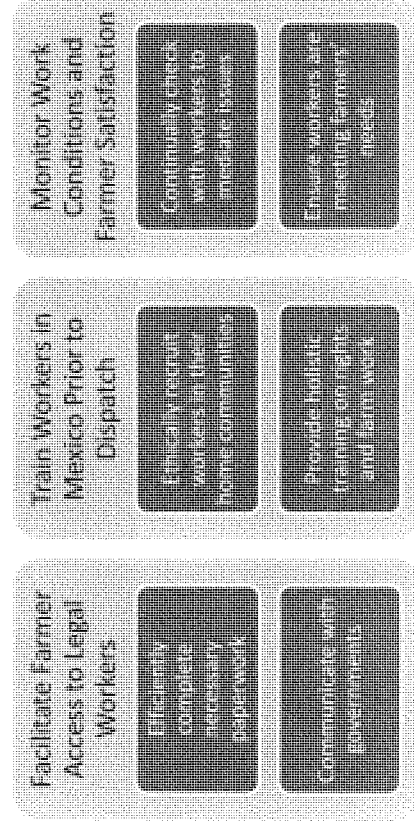
# Economic Opportunity & Reducing Violence Grants

| Title                                                                            | Partner                             | Start Date | End Date  | Funding Year | Total Funding Commitment |
|----------------------------------------------------------------------------------|-------------------------------------|------------|-----------|--------------|--------------------------|
| Promesa Café Mexico                                                              | Heifer International                | 12-Sep-13  | 31-Aug-18 | 2013         | \$2,183,511              |
| Prosopis                                                                         | Catholic Relief Services            | 01-Jan-14  | 31-Dec-16 | 2013         | \$4,999,488              |
| Profarma El Salvador                                                             | United Nations World Food Programme | 01-Mar-15  | 28-Feb-18 | 2014         | \$2,682,222              |
| Purchase for Progress Central America                                            | United Nations World Food Programme | 01-Apr-08  | 31-Jul-14 | 2010         | \$22,070,129             |
| Purchase for Progress Honduras (P4P HN)                                          | United Nations World Food Programme | 01-Jan-12  | 30-Jun-14 | 2011         | \$2,489,553              |
| Zamorano University Support                                                      | Zamorano                            | 14-Sep-06  | 03-Nov-06 | 2006         | \$214,000                |
| School Feeding Program Guatemala                                                 | United Nations World Food Programme | 21-Dec-07  | 31-Dec-09 | 2007         | \$999,153                |
| School in Mexico                                                                 | Happy Hearts Fund                   | 20-Dec-12  | 31-Dec-13 | 2012         | \$125,000                |
| School Meals Campaign Nicaragua                                                  | United Nations World Food Programme | 01-Jun-14  | 01-Jun-15 | 2014         | \$150,000                |
| Mentorship & Backpacks Program                                                   | Eva Longoria Foundation             | 27-Dec-13  | 31-Dec-16 | 2013         | \$866,500                |
| Rural Hispanic Business Development Program - Providing a Pathway out of Poverty | Center for Rural Affairs            | 01-Dec-07  | 30-Sep-17 | 2014         | \$750,000                |
| Buffett-Longoria Fund                                                            | Eva Longoria Foundation             | 01-Dec-12  | 30-Nov-14 | 2012         | \$1,000,000              |
| Interrupting Violence in El Salvador                                             | Catholic Relief Services            | 15-Dec-14  | 30-Dec-17 | <b>TOTAL</b> | <b>\$109,834,724</b>     |
|                                                                                  |                                     |            |           | 2014         | \$1,966,021              |

# Improving Migrant Labor Hiring Practices

Testing new models for safe, legal and fair employment of migrant labor

- **2.5 million** seasonal and migrant farmworkers are employed on U.S. farms
- Experts estimate 75% of those farmworkers, **1.8 million**, are not authorized to work in the U.S.
- Only **68,000** were hired through the government H2A system in 2013 showing the clear need for a more effective system
- HGBF is partnering with the United Farm Workers and Costco to support a farm-worker recruitment model to address the key issues faced by industry, farmers, and workers:



# Migrant Labor Grants

| Title                        | Partner                                       | Start Date | End Date  | Funding Year | Total Funding Commitment |
|------------------------------|-----------------------------------------------|------------|-----------|--------------|--------------------------|
| CERTO Farmworker Recruitment | United Farm Workers/ Catholic Relief Services | 01-Oct-14  | 30-Sep-19 | 2014         | \$2,835,795              |
| Mas Manos Unidas             | C.I.T.A./Catholic Relief Services             | 01-Nov-11  | 30-Aug-13 | 2011         | \$560,684                |
| United Hands (Manos Unidas)  | C.I.T.A./Catholic Relief Services             | 01-Aug-07  | 31-Jul-09 | 2007         | \$225,000                |
| <b>TOTAL</b>                 |                                               |            |           |              | <b>\$4,022,479</b>       |



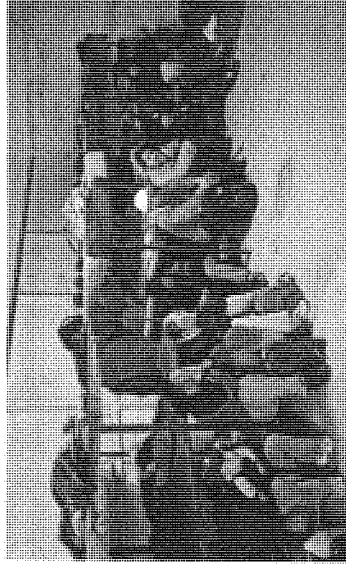
Howard G. Buffett and Eva Longoria meet with migrant farm workers in San Luis, Mexico.

# Humanitarian Assistance

## Supporting humanitarian efforts for the most vulnerable individuals

HGBF support includes funding to safely house individuals awaiting processing and to identify border crossing victims, including:

- Supporting social worker services for unaccompanied minors;
- Facilities to safely house minors deported minors;
- GIS mapping to locate and identify the remains of deceased migrants;
- Migrant centers in Mexico.



HGBF also piloted a program with Kids In Need of Defense and the Global Fund for Children to test ways to more humanely process and return unaccompanied minors to Guatemala while supporting youth employment to discourage re-migration.

# Humanitarian Assistance Grants

| Title                                                             | Partner                                       | Start Date | End Date     | Funding Year | Total Funding Commitment |
|-------------------------------------------------------------------|-----------------------------------------------|------------|--------------|--------------|--------------------------|
| All Our Kids Bilingual Coordinator & Program                      | All Our Kids                                  | 01-Sep-06  | 31-May-09    | 2006         | \$601,000                |
| Camino a Casa (Unaccompanied Minors Facility)                     | Patronato Blanco y Negro de Sonora, IAP       | 01-Jan-07  | 31-Dec-07    | 2007         | \$399,726.00             |
| Coming Together for Children Alone                                | Kids in Need of Defense                       | 24-Oct-11  | 17-Nov-11    | 2011         | \$4,000.00               |
| Guatemala Child Return and Reintegration Program                  | Global Fund for Children                      | 25-Mar-10  | 31-Mar-14    | 2010         | \$477,590.00             |
| Guatemala Child Return and Reintegration Program                  | Kids in Need of Defense                       | 15-Mar-10  | 15-Jun-13    | 2010         | \$524,631.00             |
| International Open GIS Initiative for Missing & Deceased Migrants | Pima County Coroner's Office                  | 01-Jan-08  | 31-Dec-10    | 2007         | \$175,594.15             |
| Migrant Centers                                                   | Catholic Relief Services                      | 22-Mar-05  | 21-Mar-06    | 2005         | \$97,500.00              |
| Social Services Support                                           | Florence Immigrant and Refugee Rights Project | 15-Dec-14  | 30-Dec-17    | 2014         | \$616,500                |
|                                                                   |                                               |            | <b>TOTAL</b> |              | <b>\$2,896,941</b>       |

## Enhancing Border Security

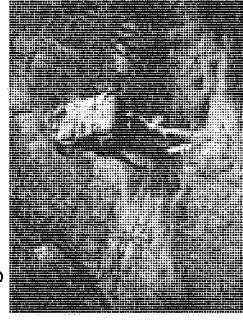
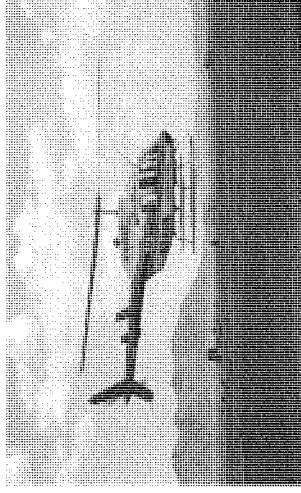
Increasing support to efforts to improve border security and tracking of illegal crossings

Border Patrol's Tucson sector has the highest number of deaths and pounds of drugs seized on the border.

HGBF supports the Cochise County Sheriff Department with:

- Upgraded communication networks
- Surveillance and officer protection equipment
- Financial investigation capacity
- Increased canine presence
- Improved training facilities
- Search and recovery air support

In addition, HGBF is supporting grassland restoration to improve land management and increase visibility on the border in partnership with local ranchers, state government, and federal agencies.



*HGBF funded trail cameras for the Cochise County Sheriff's Office drug interdiction team. This camera is set up on a common drug smuggling route. The same camera captured images of a mountain lion, bear and drug smuggler.*

# Border Security Grants

| Title                                  | Partner                         | Start Date | End Date  | Funding Year | Total Funding Commitment |
|----------------------------------------|---------------------------------|------------|-----------|--------------|--------------------------|
| Canines                                | Cochise County Sheriff's Office |            |           | 2013         | \$123,038                |
| Canine Support                         | Cochise County Sheriff's Office |            |           | 2014         | \$56,412                 |
| Computer Upgrades                      | Cochise County Sheriff's Office |            |           | 2014         | \$330,536                |
| Equipment                              | Cochise County Sheriff's Office |            |           | 2013         | \$61,681                 |
| Explorer Program                       | Cochise County Sheriff's Office | 22-Jan-13  | 21-Jan-14 | 2013         | \$50,000                 |
| General Operating Support 2010         | Dept of Human Services          | 11-Jun-10  | 31-Dec-10 | 2010         | \$100,000                |
| Helicopter                             | Cochise County Sheriff's Office | 01-Sep-14  | 31-Dec-16 | 2014         | \$3,680,376              |
| Radio 12 System 2013                   | Cochise County Sheriff's Office |            |           | 2013         | \$1,846,864              |
| Lenco Bearcat                          | Cochise County Sheriff's Office |            |           | 2014         | \$300,655                |
| Migrant Centers                        | Catholic Relief Services        | 22-Mar-05  | 21-Mar-06 | 2005         | \$97,500                 |
| Radio Upgrades 2013                    | Cochise County Sheriff's Office |            |           | 2013         | \$4,195,677              |
| Radios 2014                            | Cochise County Sheriff's Office |            |           | 2014         | \$3,964,179              |
| Radios, Schools, and Ranchers          | Cochise County Sheriff's Office |            |           | 2014         | \$148,000                |
| Range Building                         | Cochise County Sheriff's Office |            |           | 2014         | \$200,000                |
| Search & Rescue Equipment              | Cochise County Sheriff's Office | 05-Mar-13  | 04-Mar-14 | 2013         | \$153,511                |
| Shooting Range                         | Cochise County Sheriff's Office |            |           | 2012         | \$912,793                |
| Surveillance                           | Cochise County Sheriff's Office |            |           | 2014         | \$35,000                 |
| Vehicles/Equipment                     | Cochise County Sheriff's Office |            |           | 2014         | \$126,817                |
| Vehicles/Fuel                          | Cochise County Sheriff's Office |            |           | 2014         | \$119,690                |
| Grasslands Restoration/Border Security | Iroquois Foundation             |            |           | 2014         | \$172,043                |
| Tower for Communications               | Cochise County Sheriff's Office |            |           | 2014         | \$224,000                |
| General Operating Support              | Cochise County Sheriff's Office | 01-Sep-12  | 30-Dec-14 | 2014         | \$42,000                 |
| Taser's                                | Cochise County Sheriff's Office |            |           | 2014         | \$66,785                 |
| Radar                                  | Cochise County Sheriff's Office |            |           | 2014         | \$107,825                |
| Vests                                  | Cochise County Sheriff's Office |            |           | 2013-2014    | \$66,814                 |
| Vehicles/Equipment                     | Cochise County Sheriff's Office |            |           | 2015         | \$90,341                 |
| Assist Team Supplies and Body Armor    | Cochise County Sheriff's Office |            |           | 2015         | \$46,940                 |
| Quadcopter Drone System                | Cochise County Sheriff's Office |            |           | 2015         | \$61,360                 |
| Temporary Lodging                      | Cochise County Sheriff's Office |            |           | 2015         | \$10,000                 |
| Grassland Restoration/Border Security  | Iroquois Foundation             |            |           | 2015         | \$6,000,000 (committed)  |
| Helicopter                             | Cochise County Sheriff's Office |            |           | 2015         | \$3,500,000 (committed)  |
| Financial Investigations Unit          | Cochise County Sheriff's Office | 01-Jun-15  | 3-May-18  | 2015         | \$1,043,748 (committed)  |
|                                        |                                 |            |           | <b>TOTAL</b> | <b>\$27,974,525</b>      |

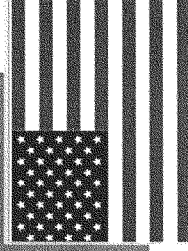


# Improving Policy in the U.S. and Latin America

Advocating for better policies to reduce illegal migration, encourage legal migration and promote fair treatment of migrant farm workers

- Documenting the role of migrant labor in U.S. food security
- Providing strategies to improve the H-2A program
- Researching the economic value of migrant agricultural labor

U.S.



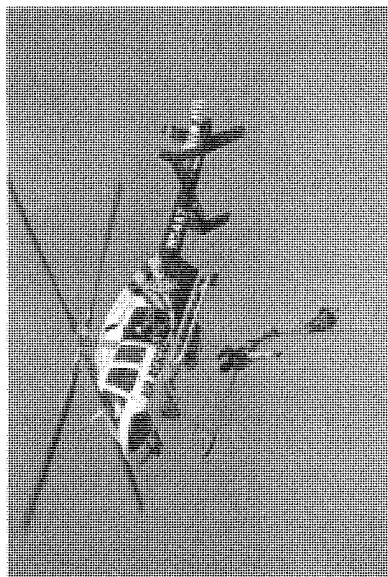
- Supporting the development of a national plan for migrants
- Educating workers about their legal rights
- Investigating recruitment fraud
- Convening key actors to build consensus

Mexico



# Policy Grants

| Title                                                                                | Grantee Name                        | Start Date | End Date  | Funding Year | Total Funding Commitment |
|--------------------------------------------------------------------------------------|-------------------------------------|------------|-----------|--------------|--------------------------|
| Advancing Advocacy                                                                   | Catholic Relief Services            | 01-Oct-13  | 30-Sep-14 | 2013         | \$374,971                |
| Advertorial on H2A                                                                   | Farm Progress                       | 25-Apr-12  | 25-Apr-12 | 2012         | \$5,220                  |
| Advertorial on H2A                                                                   | Farm Progress                       | 04-May-12  | 04-May-12 | 2012         | \$4,118                  |
| ASU H-2A Paper                                                                       | ImmigrationWorks USA                | 26-Apr-13  | 01-Jun-13 | 2013         | \$17,000                 |
| California Jobs Multiplier Report                                                    | U.C. Davis                          | 01-Aug-12  | 31-Dec-12 | 2012         | \$89,925                 |
| Economic Comparison of Income of Migrant Workers Under Visa H2A & Welfare Recipients | Arizona State University Foundation | 01-Sep-11  | 31-Aug-12 | 2011         | \$104,072                |
| Evaluate Strategies to Improve H-2A Program                                          | Bipartisan Policy Center            | 21-Mar-13  | 15-Jun-13 | 2013         | \$125,000                |
| Jonateros Secure and Fair Employment Project                                         | Catholic Relief Services Mexico     | 01-May-10  | 30-Apr-13 | 2010         | \$1,152,394              |
| Mexico Program (CEDICAM & Mercado Justo)                                             | Catholic Relief Services            | 01-May-06  | 30-Apr-07 | 2006         | \$114,000                |
| Midwest Immigrant Enumeration                                                        | Informa Economics                   | 01-Aug-12  | 30-Oct-12 | 2012         | \$18,038                 |
| Program Support (Children of the Borderlands)                                        | Arizona State University Foundation | 02-Feb-05  | 30-Aug-05 | 2005         | \$60,000                 |
| Small Footprint SFAN                                                                 | Catholic Relief Services Mexico     | 01-Sep-07  | 28-Feb-12 | 2007         | \$935,000                |
| EnComun de la Frontera (micro finance pilot)                                         | Catholic Relief Services            | 01-Oct-06  | 31-Mar-09 | 2006         | \$1,499,393              |
| Tortillas on the Roaster                                                             | Catholic Relief Services            | 01-Jan-11  | 31-Mar-12 | 2010         | \$293,000                |
|                                                                                      | <b>TOTAL</b>                        |            |           | <b>TOTAL</b> | <b>\$4,792,131</b>       |



Testimony of Othal Brand

Before the Senate Committee on Homeland Security and Governmental Affairs

March 17, 2015 HSGAC Hearing (Border Security)

Chairman Johnson, Ranking Member Carper and Members of the Committee:

Thank you for the invitation to speak to you today on this very important subject.

- My name is Othal Brand, Jr., and I would like to tell you about my experience living and working on the Rio Grande in South Texas.
- I have lived in the Rio Grande Valley of Texas for 60 years.
- My family farmed on and by the Rio Grande River for 43 years.
- We were the largest fruit and vegetable packer in the state of Texas for over a quarter of a century. We were the largest onion grower in the United States for over a quarter century. We owned several thousand acres of land on the river. We had small colonias (unincorporated neighborhoods) on our land with their own general store.
- I serve in an elected position for a water district and have done so for ten years. The water district has a pump station below the border wall on the embankment of the river. It draws its water from an inlet of the Rio Grande River. We supply a majority of the drinking water for the city of McAllen, which has a population of 135,000 people. McAllen is the largest city in the county of Hidalgo and is the 20<sup>th</sup> largest in Texas. We pump 15,000 acre-feet of water a year.

What was it like in past years:

- It was a very relaxed atmosphere with no sense of danger. As a teenager, I would swim, water-ski, swing off trees, picnic, BBQ and camp out on the river. People had travel trailers and cabins on the river.

What has it been like in recent years:

- According to our Sheriff –(and he cites federal statistics)- 53 percent of all illegal crossers came into the United States through Hidalgo County, my county.

- Anzalduas Park is next to Anzalduas Dam on the Rio Grande River. We used to picnic there. Next to nobody uses it today. It is too dangerous.
- When the government had Sequestration, the very next day and for several weeks, we had dozens of illegals coming across the river. They did 20,000 dollars of damage to our property in the weeks that followed.
- All the entertaining and fun activities that occurred on the river years ago are no more. All of the buildings and homes that we owned and leased on the river have been torn down. Nobody lives there now.
- My irrigation district workers have been shot at twice, apparently not to kill them, but rather to scare them or chase them off so that the trans-national gangs could haul more drugs across.
- We would have what the Border Patrol calls splash-downs. The drug dealers would be chased back to our facility, drive off the embankment into the river, take the drugs out and haul them back to Mexico. The last time Border Patrol cleaned out the river in front of our channel, they pulled out five cars with one still loaded with drugs. There would be several men on the Mexican side who would come out of the brush to grab the drugs and take them back to try another day.
- The county of Hidalgo has 1,582 square miles and 22 incorporated cities which comprise 200 square miles of the county. That leaves 1,382 square miles who's primary law enforcement entity is the Hidalgo County Sheriff's Department with only 139 patrolling officers. This is equal to the same number of patrolling officers in the McAllen Police Department. (McAllen has 47 square miles). The difficulty of securing the safety of life and property outside of the cities of Hidalgo County is a huge challenge to law enforcement and is also an incentive to the criminal element. If what Hidalgo County has was replicated in Washington, D.C., the capital would have just six officers patrolling the streets.

What has our water district done to help?

- When I became manager of the water district, we were having illegal traffic every day. It was either human or drug trafficking. I said to my workers, "Why do you not call?" They said, "If we call, they will know it was us." I said to myself that this is not the work environment I want for these men. That is not what America is about.

- I put up street lights, thinking that would scare them off. It did not, but rather, it allowed them to see better at night.
- Border Patrol put up a portable, manned tower with a \$65,000 camera that had infra-red, thermal imaging and night vision. It stopped them from crossing there.
- Next, I put in towers and cameras for the water district and then gave the Border Patrol access to those towers and cameras. This helped a lot.
- To stop the splash downs, we put up Jersey Barriers across our embankment. That stopped the splash downs.
- At the Border Patrol's request, we put up more floodlights, so if you go to our water district at night, it is lit up like a Christmas tree.
- We put in a boat ramp and a helicopter pad for Border Patrol approximately four years ago. It is the only permanent one that Border Patrol has access to on the river from McAllen to the Gulf of Mexico. Our boat ramp, the "Jaime Zapata Launch Point", has allowed federal and state law enforcement to have 18 boats at our facility on a rotating 24/7 basis. One hundred and fifty thousand dollars were spent on the ramp.

#### What about the Border Wall?

- Our pumping station is on what some would call the Mexican side of the border wall. They put the Border Wall right up the middle of our 45-acres, splitting out property in two.
- The Border Wall helps. It has deterred. Little children and women are not going over that wall. Young boys get over the wall with a ladder. Now they have to try to get through a gate.
- I have tried to make our district, which is below the wall and therefore vulnerable, as secure as possible to guarantee the safety of our workers and to assist law enforcement.

#### Here are my recommendations and suggested Force Multipliers:

- As a nation, we are doing more than we have ever done before, but we still have traffic. The aerostats and the drones are great but they are what I would call a fair-weather system. When it is overcast, the drones

are worthless. When the winds are high, the aerostats have to be pulled down.

- Force Multiplier - You are putting portable towers with cameras up. You need to do more of this. You need to continue putting more towers that are usable in all weather conditions.
- I see four components to what Border Patrol does:
  1. Boots on the ground
  2. Technology
  3. Air
  4. Marine

Where you are lacking – severely lacking – is marine.

- From Brownsville to Rio Grande City, over 250 miles of river, you have only two access points for boats – one above Anzalduas Dam and one below it. I agree with Border Patrol that the most vulnerable place, if you are an illegal crosser, is when you are in or on the river. That is the easiest place to deter or intercept them.
- Force Multiplier - What I am suggesting to you today is a one-time expense. It is not a recurring cost. It is to build more boat ramps and increase the height of the weirs.
- Below Anzalduas Dam, we have eight weirs. Border Patrol needs boat ramps between these weirs.
- Without the ramps and the ability to put boats where Border Patrol needs them, they cannot effectively patrol the river. If illegals see the boats, they won't get in the water.
- Also, we have 19 water districts on the river. They need security. They are supplying 90-percent of the water to 1.5 million people in the Rio Grande Valley. They have no protection because they are all below the wall, except for one.
- Next, when it comes to building more boat ramps, I am told the problem for Border Patrol is the environmental studies and the length of time it takes to do them, which I am told takes years. Water districts do not have these issues. They have channels off of the river, such that the water district pump intakes are not on the river or the embankment, so there is no environmental issue if you put the ramps on the channels.

Give the Border Patrol the money to build the ramps and, as an added benefit, the pumping stations will be more secure.

- Force Multipliers – Increase Height of Weirs - We need higher water levels in the river in order for Border Patrol boats to operate. To do that ,the eight weirs we have between Brownsville and Mission/McAllen, need to be elevated. That is a one-time cost. In our district, it is going to cost us \$150,000 to elevate our neighboring district's weir approximately two feet. It is a one-time cost that will have a huge impact on the marine component of Border Patrol.
- These suggested solutions will diminish all the other costs you have inland. If you stop the crossers from crossing, you have increased your efficiency and maximized your funding.

#### What has Texas done right?

- Texas has proven that with more technology and manpower, you can deter illegal crossings. When the National Guard came down, they sat on the river. The troops were parked on the embankment and they did not move. During that time, Mission Police Department will tell you their crime rate dropped by 18 percent and McAllen's dropped nine percent.

#### Three final things:

- 1. I am not disputing those who say the Valley is safe. What they mean is that the cities are safe. I am talking about those living in rural areas and those living on and by the river. People are moving off their farms and ranches because it is not safe. That is not how it was 60 years ago. We are much worse off today.
- 2. To those who say that more border security of the kind I am describing, including southbound checkpoints, will hurt our economy, I say that if you protect my home, my family and my community first, then the economy will survive and take care of itself. The cartels are like ticks or leaches. They will bleed the animal (the economy) but they will not kill it. It is not in their best interest.
- 3. There are only two things that keep those who live on the river and in the rural areas safe from foreign criminal elements (cartels). One is



not to get in the way of the cartels, and two is not to mess with their business. If you do either of those things, then the cartels will do to you everything they are doing to the citizens on the other side of the river – and everybody who lives on the river and rural areas today knows it.

Again, thank you very much for the opportunity to share this information with you. I will be happy to answer any questions you may have.

Yours sincerely,

Othal Brand, Jr.  
McAllen, Texas.



Monica Weisberg-Stewart  
 Chair, Texas Border Coalition Committee on Border Security and Immigration  
 Senate Homeland Security Committee  
 "Securing the Southwest Border; Perspectives from Beyond the Beltway"  
 March 17, 2015

Thank you for inviting me to testify before you today. I am a businesswoman in McAllen, Texas. The family retail business founded by my father in 1958 – Gilberto's Discount House – was located eight miles from the Rio Grande River and recently closed after 57 years in business. I want to share with you today my experiences on the border, both as a businesswoman and as the chairwoman of the Texas Border Coalition's Committee on Border Security and Immigration. TBC is the collective voice of Texas border mayors, county judges, and communities on issues that affect our quality of life in the Texas-Mexico border region. You'll be hard pressed to find anyone who cares more about the issue of border security than those of us who live, work, and raise our families on the border.

You will hear from others today about community needs, mostly as they relate to the areas of the border between the land ports of entry. Last year, U.S. taxpayers spent \$3.6 billion on Border Patrol for the area between the ports – more than triple the agency's entire budget in 2000. That effort, combined with better interior enforcement and an improving Mexican economy, has contributed to an 80 percent reduction in apprehensions of undocumented border crossers since 2000. I have great admiration for the men and women of the Border Patrol, or as I refer to them as "the men and women in green," and I applaud them and say, "good work."

At the same time, I believe our farmers and ranchers have legitimate complaints that you should strive to address. TBC has consistently opposed the massive federal investment in fencing between the ports of entry, because as army trainers teach, "there is nothing man can build that man can't overcome." This certainly holds true with the border fence -- people are going over it, under it, and around it.

Moreover, using the decline in apprehensions between the land ports of entry as a measure of border security success overlooks the fact that between one-third and one-half of all the undocumented persons in the U.S. today entered this country lawfully through the ports of entry -- and later overstayed their visas. We have to help our

Customs and Border Protection agents (the men and women in blue) do a better job of preventing the entry of people who intend to overstay.

Few would contest that transnational crime on the Mexican border is the principle threat to security on the border. However, measuring border security success based on apprehensions between the ports of entry also ignores the fact that the cartels – the *narco-traficantes* – have built a successful business model based on the smuggling of cocaine, heroin and methamphetamines into the U.S. from Mexico, and the overwhelming majority of that smuggling activity occurs through the ports. CBP officers performing immigration inspections are the primary line of defense against illegal drug flows through the ports of entry.

Narcotics seizures on the border are at all-time high levels, according to the Justice Department. However, the continued success of the \$40 billion illegal drug traffic into the U.S. shows that traffickers are not being deterred by the current effort. I believe if these traffickers were selling a legal product they would be a Fortune 500 company that is well manned, funded, and equipped. The issue is our men and women in blue aren't funded to compete and win this battle. We have to help our Customs and Border Protection agents do a better job of preventing the importation of illegal drugs through our ports of entry by the transnational crime networks.

And as we all know, the 19 Al Qaeda attackers involved in the terrorist attacks of September 11, 2001 entered the United States legally through U.S. air ports of entry – not land ports of entry. They did not swim across the Rio Grande. Overnight, constraining terrorist travel was recognized as a critical defense against terrorist attacks within the United States. The fact that no large-scale attack from foreign terrorists has occurred on U.S. soil since 9/11 indicates that the intelligence and enforcement that has gone into securing the homeland from terrorism has exceeded any of our expectations. In fact, there is not one case of a terrorist attack that involved someone coming across the Mexican border and we would like to keep that way. With that superior record, we have to continue to help our Customs and Border Protection agents prevent terrorist agents from crossing over to U.S. soil.

Proposals to “fix” border security on the Southwestern border often come from people who don't have daily experience on the border, moving legitimate goods between Mexico and the U.S., working with our manufacturers, our farmers, the Customs Inspectors at ports of entry or the Border Patrol agents between them.

I suggest that Congress focus on these two priorities: preventing the unlawful entry of people, especially those who might pose a threat to our nation, through the ports of entry; and preventing the smuggling of high value drugs that are the lifeblood of the transnational criminal networks through the ports of entry.

Increasing effective security measures at the ports of entry will also benefit every state in the union. Increased enforcement – more Customs agents, better technology and functional infrastructure – means more legitimate trade. According to the Wilson Center, 6 million U.S. jobs depend on legitimate trade with Mexico, one in every 24 workers, which amounts to half a trillion dollars of goods and services per year. On a typical day, CBP inspectors process 1 million travelers; handle 70,300 cargo containers; stop 425 agricultural pests from entering the U.S.; quarantine 5,000 harmful products and substances; and identify nearly 600 people who raise national security concerns.

Mexico's trade with the United States rose to \$534.48 billion in 2014, according to a WorldCity analysis of the latest U.S. Census Bureau data. That's a 5.5 percent increase from 2013. Not surprisingly, Texas's largest trading partner is Mexico, with \$22 billion in tech exports flowing to Mexico.

Yet, it can take three or four hours to legally cross the border from Mexico. And that costs the U.S. economy money. My business used to profit from the volume of Mexico residents legally making day trips to shop in McAllen, where the U.S.'s lower tariffs and agricultural subsidies make numerous products 30 percent cheaper to buy here than in Mexico.

In our region, retailers used to have a saying: "when the U.S. has economic problems we would sneeze; when Mexico would devalue the peso we had pneumonia." Unfortunately, because of Washington's way of funding our ports of entry by "putting the cart before the horse" and the perception of criminal activity happening on the American side of the border have caused us to suffer from economic pneumonia all the way around. Our ports of entry suffer from antiquated infrastructure, lack of technology, poor bandwidth, bottlenecks, and an overall lack of preparedness to deal with the increased traffic from Mexican Federal Highway 40 (which begins in Mazatlan, Mexico, crosses the mountains and then goes down to the Texas border). Traffic along this route is predicted to increase 40 percent, making our ports of entry overloaded and inefficient to meet the border trade and security needs of today.

When your customer has to wait three or four hours merely to cross the parking lot without places to use the restroom, that customer is likely to judge even a 30 percent savings as not enough. These are just a few reasons why I chose to shut down my 57-year-old family business. I am not alone.

The result is a significant and chronic loss of jobs and trade on both sides of the border. But long waits at border crossings could be eliminated if the federal government would aggressively invest in our ports of entry with new infrastructure and technology. In business we look at what will give us the biggest bang for the buck, and we believe the biggest return on investment is at the ports of entry. We understand that resources are

limited, but those investments in both security and legitimate trade and travel will give us the biggest return.

Let me give you a real world example. For years, the Texas Border Coalition called on Congress to allow local communities to help pay for additional overtime for Customs and Border Protection Officers. The City of El Paso was one of five pilot projects chosen for a five-year test under Section 560 of the 2013 Consolidated Appropriations Act.

The pilot started a year ago, and traffic volumes increased nearly 20 percent for pedestrians and almost one-third for vehicles. Even with the increased volume, wait times went down as well. We believe that as the program continues, we will see larger decreases in wait times. According to the Pharr International Bridge, which also participates in this pilot program through the South Texas Asset Consortium (STAC), their port of entry recorded \$30 billion in trade in 2014. The City of Pharr tells me that they have found the pilot program very useful and a good return on investment.

A 30 percent increase in vehicular traffic across the bridge means a boost in local business, international trade and benefits every state – all because of an investment by local government. The program is too new for us to be able to quantify the return on investment, but local governments from El Paso to the Rio Grande Valley are sinking their limited funds into these pilot projects because they cannot afford to wait for Congress to honor its constitutional obligations on the border.

This committee has a responsibility to protect the nation from unlawful entry, from transnational crime and from the threat of terrorism. The Texas Border Coalition suggests you can best fulfill your responsibility, best fill the gaps in border security, by investing the same way that local border communities do – in our land ports of entry.



Northern Borders  
Coalition

WRITTEN STATEMENT OF  
THE AMERICAN CIVIL LIBERTIES UNION, the  
SOUTHERN BORDER COMMUNITIES COALITION, and the  
NORTHERN BORDERS COALITION

For a Hearing on

**"Securing the Southwest Border: Perspectives from Beyond the Beltway"**

**Submitted to the U.S. Senate Committee on Homeland Security and Governmental Affairs**

March 17, 2015

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## I. Introduction

For nearly 100 years, the American Civil Liberties Union (ACLU) has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. With more than a million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C., for the principle that every individual's rights must be protected equally under the law. The ACLU's Washington Legislative Office (WLO) conducts legislative and administrative advocacy to advance the organization's goal of protecting border residents' and immigrants' rights, including supporting a roadmap to citizenship for aspiring Americans.

The ACLU of New Mexico's Regional Center for Border Rights (RCBR) stands with border communities to defend and protect America's constitutional guarantees of equality and justice for all families. The RCBR works in conjunction with ACLU affiliates in California, Arizona, Texas, Michigan, Washington, and New York, as well as advocates throughout the border region who comprise the Southern Border Communities Coalition (SBCC) and the Northern Borders Coalition (NBC). SBCC brings together more than 60 organizations from San Diego, California, to Brownsville, Texas, to ensure that border enforcement policies and practices are accountable and fair, respect human dignity and human rights, and prevent loss of life in the region. NBC is a union of organizations along the northern border working to stand up for civil and human rights together. The Coalition helps build shared strategies amongst members to address new border challenges, and collaborates with partners in the Southwest to share best practices.

The ACLU, SBCC, and NBC submit this statement primarily to provide the Committee with an appraisal of the civil liberties implications of border security proposals. We are deeply concerned about the wrong direction in which some would like to take border policy. The ACLU, SBCC, and NBC oppose exorbitant spending on border enforcement, spending which is taking place without thoughtful consideration of current border-community and security needs. Current proposals to throw money, personnel, and equipment at the border would exacerbate the problems border communities face with militarization today and ignore that:

- Deployment of additional border-security resources along the U.S.-Mexico border would not be rooted in true border-security needs. Over more than a decade, the U.S. government has built a massive and comprehensive enforcement regime that has produced the most enforced border in U.S. history. Adding more resources would not only be wasteful and unnecessary, but would also be at odds with the top-of-the-charts safety, economic vitality, and diversity of border communities.
- Overall, border-wide apprehensions by U.S. Customs and Border Protection (CBP) are near their lowest levels in 40 years and net migration from Mexico at zero. Last summer's migration of families and children fleeing violence in Central America and turning themselves in was correctly identified by CBP leadership as a humanitarian matter, not a threat to border security.
- Spending on enforcement, particularly at the Southwest border, has increased dramatically over the last decade with no commensurate accountability measures, resulting in civilian deaths at the hands of CBP personnel, unnecessary migrant deaths in the desert, and many other civil and human rights abuses on both our nation's southern and northern borders.

The U.S. government cannot afford to throw money down the border-enforcement-only drain, especially because this spending has also damaged quality of life in border communities. The Committee must not uncritically adopt the erroneous conventional wisdom of inadequate border security; instead, the

country needs transparent and broad-ranging metrics to measure life in border communities. Suggesting in a vacuum of information that more border enforcement resources are needed lacks fiscal responsibility and fails to give due attention to revitalizing border communities rather than subjecting tens of millions of border residents to continued suffering from a wasteful, militarized enforcement regime. Moreover, justifying the additional deployment of border-enforcement resources and family detention as an appropriate response to a humanitarian crisis in Central America contradicts our core values of compassion and justice for scared mothers and children.

The ACLU, SBCC and NBC urge the Committee to focus its efforts on ensuring that future border security is conducted humanely and in accordance with best police practices. Legislation should bring greater oversight and accountability—not war equipment or more boots on the ground—to CBP: our nation’s largest law enforcement agency.

**I. Border-Security Proposals Must Reject the Misguided, Wasteful Approach of the Corker-Hoeven “Border Surge” Amendment. Instead, Congress Should End the Abusive Militarization of Border Communities.**

**a. The “Mini-Industrial Complex” of Border Spending**

A severely misguided approach to border security was incorporated in Senate Bill 744’s “surge” of border-security resources in 2013. Such proposals ignore the fact that border-security benchmarks of prior proposed or enacted legislation (in 2006, 2007, and 2010) have already been met or exceeded.<sup>1</sup> In the last decade, the United States has relied heavily on enforcement-only approaches to address migration, using deterrence-based border-security strategies that have continued and expanded to record levels under the Obama Administration:

- CBP has become an interior law-enforcement agency through its vast claimed authority to patrol within 100 miles of all land and sea borders, an unnecessary overreach based on outdated regulations issued in the 1950s.
- Because of “zero-tolerance” initiatives like Operation Streamline, the Department of Homeland Security (DHS) now refers more cases for federal prosecution than the Department of Justice’s (DOJ) law enforcement agencies. Under President Obama, immigration-related federal prosecutions have reached record levels at tremendous cost to U.S. taxpayers. Federal prisons are already more than 30 percent over capacity, due in large part to indiscriminate prosecution of individuals for crossing the border without authorization, often to rejoin their families.<sup>2</sup> The majority of those sentenced to federal prison in 2013 were Latinos, who are now held in large numbers in substandard private prisons.<sup>3</sup>
- Since 2003, the U.S. Border Patrol has doubled in size and now employs more than 21,400 agents, with about 85 percent of its force deployed at the U.S.-Mexico border. So many Border Patrol agents now patrol the southern border that if they lined up equally from Brownsville to San Diego, they would stand in plain sight of one another. This number does not include the thousands of other DHS officials, including CBP Office of Field Operations officers and one-fourth of all Immigration and Customs Enforcement (ICE) personnel deployed at the same border. It also does not include 651 miles of fencing, 333 video surveillance systems, and at least 10 drones for air surveillance.

From a fiscal perspective, from FY2004 to FY2012, the budget for CBP increased by 94 percent to \$11.65 billion, a leap of \$5.65 billion; this following a 20 percent post-9/11 increase of \$1 billion.<sup>4</sup> By way of comparison, this jump in funding more than quadrupled the growth rate of NASA’s budget and was almost ten times that of the National Institutes of Health. For FY2016, the Administration’s budget



request for CBP is about \$13.5 billion.<sup>v</sup> U.S. taxpayers now spend more on immigration enforcement agencies (\$19 billion) than on the FBI, DEA, ATF, U.S. Marshals, and Secret Service—*combined*.

CBP's spending runs directly counter to data on recent and current migration trends and severely detracts from the true needs of our nation.. Much attention has been paid to increased apprehensions of children and families in south Texas, many of whom are fleeing terrible violence in Central America. When analyzed border-wide and over time, however, migrant apprehensions remain lower than at any time since the 1970s. Between 2000 and 2010, apprehensions by the Border Patrol declined more than 72 percent to about 463,000. In FY2014, Border Patrol is reported to have apprehended 486,651 unauthorized crossers in total—fewer than two apprehensions a month per agent.<sup>vi</sup>

The costs per apprehension vary per sector, but are generally at an all-time high. The Yuma, Arizona sector, for example, has seen a 95 percent decline in apprehensions since 2005 while the number of agents has tripled. Each agent was responsible for interdicting fewer than seven immigrants in 2013, contributing to ballooning per capita costs: each migrant apprehension at the border now costs five times more, rising from \$1,400 in 2005 to over \$7,500 in 2011.<sup>vii</sup>

The Committee should heed House Appropriations Committee Chairman Hal Rogers' warning about the irrationality of border spending: "It is a sort of a mini industrial complex syndrome that has set in there. And we're going to have to guard against it every step of the way."<sup>viii</sup> A data-driven, bipartisan approach to border security, as embodied by H.R. 1417, the Border Security Results Act introduced in the last Congress, is an improvement over proposals like the Corker-Hoeven "border surge." However, H.R. 1417's narrow focus on border security remains misplaced at a time when border enforcement is at an all-time high and continues to have a detrimental impact on border communities. It is a mistake to seek a 90 percent "illegal crossing effectiveness rate" across the Southwest border – much less the 100% perfect rate embodied in current legislation, including S.208: the Secure the Border First Act – without contemplating a thorough study of border needs, particularly greater oversight and accountability and facilitation of cross-border economic exchange.

**b. Congress Must Expand Oversight and Accountability to Mitigate CBP Corruption and Abuse.**

Unprecedented investment in border enforcement without corresponding oversight mechanisms has led to a sharp increase in human and civil rights violations, traumatic family separations in border communities, and racial profiling and harassment of Native Americans, Latinos, and other people of color – many of them U.S. citizens and some who have lived in the region for generations. Corruption and criminal conduct have also plagued the dramatically and recklessly expanded CBP force, which, as reported by *Politico Magazine*, had nearly one CBP officer or agent arrested for misconduct **every single day** from 2005 to 2012.<sup>ix</sup>

*Politico Magazine's* exposé of CBP closely examines the now well-documented deficiencies in CBP's use-of-force policy and practice, which have led the agency to become one of our nation's "deadliest" and most "out-of-control" law enforcement agencies. Since January 2010, at least 34 individuals have died from lethal force by CBP officers and agents. These cases include 14 individuals who were U.S. citizens and 6 individuals who were shot and killed while standing in Mexico—three of whom were teenagers, ages 15, 16 and 17.

In numerous cases individuals were shot multiple times, including through the back, such as Jose Antonio Elena Rodriguez who was struck by at least eight bullets—all but one in the back—across the border fence in Nogales, Sonora by agents responding to alleged rock throwing.<sup>x</sup> Also among the most well-known cases is that of Anastasio Hernandez Rojas who—by the happenstance of witness video—was shown to be handcuffed and prostrate on the ground, contrary to the agency's incident reporting,

when dozens of agents beat and Tased him to death. The San Diego coroner classified Mr. Hernandez's death as a homicide, noting in addition to a heart attack: "several loose teeth; bruising to his chest, stomach, hips, knees, back, lips, head and eyelids; five broken ribs; and a damaged spine." Both of these cases, and many more, illustrate common shortcomings in policy and practice that were criticized in an audit of CBP's use-of-force incidents conducted by the Police Executive Research Forum (PERF) and publicly released on May 30, 2014.

The *Arizona Republic* in December 2013 documented more than 46 deaths for which CBP is responsible since 2004-2005, and, as noted by the *Republic*, in "none of [these] deaths has any agent or officer been publicly known to have faced consequences — not from the Border Patrol, not from Customs and Border Protection or Homeland Security, not from the Department of Justice, and not, ultimately, from criminal or civil courts."<sup>x</sup> Former head of CBP Internal Affairs James F. Tomsheck has flagged at least a quarter of 28 lethal force cases as "highly suspect," and alleged that "Border Patrol officials have consistently tried to change or distort facts to make fatal shootings by agents appear to be 'a good shoot' and cover up any wrongdoing." Perhaps most alarmingly of all, Tomsheck said he believes that thousands of employees hired by CBP during the agency's unprecedented expansion after 9/11 are potentially unfit to carry a badge and gun.<sup>xii</sup> Lack of accountability for these unprofessional and dangerous personnel mars the reputations of officers and agents who conduct themselves properly.

CBP's failure to establish an institutional culture of accountability has far-reaching consequences for border communities, beyond excessive force. Numerous administrative complaints, legal claims, and reports documenting widespread CBP abuse in short-term custody facilities detail physical and verbal abuse, denial of medical care, failure to provide sufficient food and water, overcrowding, exposure to extreme temperatures, denial of communication with family and consular or legal support, failure to return personal belongings at the moment of repatriation, and use of coercion to pressure individuals into signing away legal rights.<sup>xiii</sup>

One New Mexican and U.S. citizen, Jane Doe, was held for hours by CBP officials who subjected her to repeated, invasive searches at a port of entry in El Paso, TX and subsequently a local hospital. After hours of humiliating searches she never consented to and which turned up no contraband, Ms. Doe was released with a hospital bill.<sup>xiv</sup> CBP's use of coercion to pressure immigrants to surrender legal rights is also the focus of a recently settled lawsuit.<sup>xv</sup> Failure to provide due process in our detention and removal programs, by both CBP and ICE, represents a tremendous threat to protecting family unity. The ACLU's most recent report, *American Exile: Rapid Deportations that Bypass the Courtroom*, highlights that 83% of 438,421 deportations in 2013 were administered by immigration officers with little to no judicial review or oversight.<sup>xvi</sup> In border communities, CBP's resistance to reforms that protect due process and seek to implement discretion have long resulted in traumatic family separations that undermine fairness and justice.

Indeed, by removing long-time residents without due process and maintaining interior checkpoints and roving patrols many miles from the border, CBP acts as an interior police force within an antiquated 100-mile zone. This zone of CBP's claimed authority extends toward the interior from any land or sea border, a distance that has no statutory basis and originated without scrutiny 60 years ago in now-outdated regulations.<sup>xvii</sup> The area includes two-thirds of the U.S. population, entire states like Florida and Maine, as well as almost all of the country's top metropolitan areas. This zone has converted CBP, particularly Border Patrol, into an interior enforcement agency that widely roams border communities.

CBP's interior enforcement activities do little to further border-security goals but much to harm the quality of life of those who live and work in the border region. This includes communities like Arivaca, AZ, where residents petitioned for the removal of one of three interior checkpoints that surround their community and documented daily encounters between residents and agents. Their report found that

Latino motorists were more than 26 times more likely to be asked to show identification, and 20 times more likely to be sent to secondary inspection than White motorists.<sup>xxviii</sup> But even non-Latino residents like Clarisa Christiansen and her children live in fear of the Border Patrol after agents pulled her over on a rural stretch of road near her house, threatened to cut her out of her seatbelt with a knife, and slashed her tires—all because she asked to know the reason agents stopped her.<sup>xix</sup>

Northern border residents have reported Border Patrol agents conducting roving patrols near schools and churches and asking passengers for their documents on trains and buses that are traveling far from border crossings. The ACLU of Washington State brought and settled a class-action lawsuit to end the Border Patrol's practice of stopping vehicles and interrogating occupants without legal justification. One of the plaintiffs in the case was an African American corrections officer and part-time police officer pulled over for no expressed reason and interrogated about his immigration status while wearing his corrections uniform.<sup>xx</sup> In this context, we are dismayed that CBP and the Transportation Security Administration obtained "exemptions" from the Department of Justice's newly-released Guidance on the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity.<sup>xxi</sup>

To expand border resources – particularly Border Patrol staffing – would badly worsen CBP's accountability crisis and compound the damage caused by prior hiring binges. It would also run contrary to the reality of border communities, which are safe,<sup>xxii</sup> diverse, and economically critical to this country. Our communities are forced to endure regular aggression, hostility, and intimidation from a significant percentage of CBP officers and agents. Border residents, like any community, should not have to live with fear and mistrust of law enforcement.

Border communities are a vital component of the trillion-plus dollars in trade between the U.S. and its neighbors, and the damaging effects of militarization on them must be addressed by serious oversight and accountability reforms to CBP. While the federal government has the authority to control our nation's borders and regulate immigration, CBP officials must do so in compliance with national and international legal norms and standards.

As employees of the nation's largest law enforcement agency, CBP officials should be trained and held to the highest law-enforcement standards. Systemic, robust and permanent oversight and accountability mechanisms for CBP must be the starting point for any discussion on border security:

- Equipping all CBP personnel with body-worn cameras, within a policy framework including robust privacy protections;<sup>xxiii</sup>
- Implementing enforceable CBP custody standards and a complete ban on racial, religious, and other offensive profiling;
- Reforming DHS complaint systems to provide a transparent, uniform, efficient process for filing complaints;<sup>xxiv</sup> and
- Rolling back the antiquated 100-mile zone.

Such improvements would create a legacy of CBP reform that would improve the quality of life and restore trust for this and future generations of border residents.

### **Conclusion**

Congress should transform border enforcement in a manner that is fiscally responsible, respects and listens to border residents before imposing policy, and upholds Constitutional rights and American values. We urge the Committee to prioritize reduction of CBP abuses in the currently oppressive border and immigration enforcement system which has cost more than \$250 billion in today's dollars since 1986.<sup>xxv</sup>

- <sup>i</sup> Greg Chen and Su Kim, "Border Security: Moving Beyond Past Benchmarks," AMERICAN IMMIGRATION LAWYERS ASSOCIATION, (Jan. 30, 2013), available at: <http://www.aila.org/content/default.aspx?bc=25667d3061>
- <sup>ii</sup> E. Ann Carson, U.S. Department of Justice, BUREAU OF JUSTICE STATISTICS, "Prisoners in 2013" (Sept. 2014), available at: <http://www.bjs.gov/content/pub/pdf/p13.pdf>
- <sup>iii</sup> U.S. Sentencing Commission, 2013 ANNUAL REPORT, Chapter 5, available at [http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2013/2013\\_Annual\\_Report\\_Chap5\\_0.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2013/2013_Annual_Report_Chap5_0.pdf); see also ACLU of Texas and ACLU, *Warehoused and Forgotten: Immigrants Trapped in Our Shadow Private Prison System*, (June 2014), available at <https://www.aclu.org/sites/default/files/assets/060614-aclu-car-reportonline.pdf>
- <sup>iv</sup> Michele Mittelstadt et al., "Through the Prism of National Security: Major Immigration Policy and Program Changes in the Decade since 9/11," (Migration Policy Institute, Aug. 2011), 3, available at [http://www.migrationpolicy.org/pubs/FS23\\_Post-9-11policy.pdf](http://www.migrationpolicy.org/pubs/FS23_Post-9-11policy.pdf)
- <sup>v</sup> Department of Homeland Security, "Budget-in-Brief: Fiscal Year 2015," available at <http://www.dhs.gov/sites/default/files/publications/FY15BIB.pdf>
- <sup>vi</sup> Los Angeles Times, "Border patrol report," (Dec. 4, 2014), available at <http://documents.latimes.com/border-patrol-report/>
- <sup>vii</sup> Immigration Policy Center, *Second Annual DHS Progress Report*, (Apr. 2011), 26, available at [http://www.immigrationpolicy.org/sites/default/files/docs/2011\\_DHS\\_Report\\_041211.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/2011_DHS_Report_041211.pdf)
- <sup>viii</sup> Ted Robbins, "U.S. Grows An Industrial Complex Along The Border," NPR (Sept. 12, 2012), available at <http://www.npr.org/2012/09/12/160758471/u-s-grows-an-industrial-complex-along-the-border>
- <sup>ix</sup> Garrett M. Graff, "The Green Monster: How the Border Patrol became America's most out-of control law enforcement agency," POLITICO MAGAZINE (Nov./Dec. 2014), available at <http://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220.html#.V1Idurlf8Wk>
- <sup>x</sup> Brian Skoloff, "Border Patrol Shot Mexican Teen Jose Antonio Elena Rodriguez 8 Times: Autopsy," ASSOCIATED PRESS (Feb. 8, 2013), available at [http://www.huffingtonpost.com/2013/02/08/border-patrol-shot-mexican-teen-jose-antonio-elena-rodriguez-autopsy\\_n\\_2646191.html](http://www.huffingtonpost.com/2013/02/08/border-patrol-shot-mexican-teen-jose-antonio-elena-rodriguez-autopsy_n_2646191.html)
- <sup>xi</sup> Cherrill Crosby, "Change occurring after Republic's border investigation," ARIZONA REPUBLIC (Aug. 4, 2014), available at: <http://www.azcentral.com/story/news/politics/investigations/2014/08/02/border-force-republic-investigation-change/13534935/>
- <sup>xii</sup> Andrew Becker, "Removal of border agency's internal affairs chief raises alarms," CENTER FOR INVESTIGATIVE REPORTING (June 12, 2014), available at: <http://cironline.org/reports/removal-border-agencys-internal-affairs-chief-raises-alarms-6443>
- <sup>xiii</sup> See, e.g., Americans for Immigrant Justice, The "Hieleras": A Report on Human & Civil Rights Abuses Committed by U.S. Customs and Border Protection (Aug. 7, 2013), <http://aijustice.org/the-hieleras-a-report-on-human-civil-rights-abuses-committed-by-u-s-customs-border-protection-2/>
- <sup>xiv</sup> Roque Planas, "Woman's Lawsuit Alleges Horrifying Abuse By Border Officers, Including Cavity Searches And Forced Bowel Movements," HUFFINGTON POST (Mar. 6, 2014), available at [http://www.huffingtonpost.com/2014/03/06/border-cavity-search\\_n\\_4907225.html](http://www.huffingtonpost.com/2014/03/06/border-cavity-search_n_4907225.html)
- <sup>xv</sup> See ACLU, *ACLU Achieves Class Action Lawsuit Settlement that Ends Deceitful Immigration Practices* (Aug. 27, 2014), available at: <https://www.aclusandiego.org/aclu-achieves-class-action-lawsuit-settlement-ends-deceitful-immigration-practices/>
- <sup>xvi</sup> See ACLU, *American Exile: Rapid Deportations that Bypass the Courtroom* (Dec. 2014), available at: <https://www.aclu.org/immigrants-rights/american-exile-rapid-deportations-bypass-courtroom-report>
- <sup>xvii</sup> See ACLU, *The Constitution in the 100-Mile Border Zone* (2014), available at <https://www.aclu.org/immigrants-rights/constitution-100-mile-border-zone>
- <sup>xviii</sup> Fernanda Echevarri, Group Alleges Border Patrol is Racial Profiling at Arivaca Checkpoint, NATIONAL PUBLIC RADIO (Oct. 20, 2014), available at: <https://www.azpm.org/p/top-news/2014/10/20/47393-group-alleges-border-patrol-is-racial-profiling-at-arivaca-checkpoint/>
- <sup>xix</sup> See video at ACLU website "Border Communities Under Siege," available at <https://www.aclu.org/border-communities-under-siege-border-patrol-agents-ride-roughshod-over-civil-rights>
- <sup>xx</sup> Complaint available at [http://www.aclu-wa.org/sites/default/files/attachments/2012-04-26--Complaint\\_0.pdf](http://www.aclu-wa.org/sites/default/files/attachments/2012-04-26--Complaint_0.pdf)
- <sup>xxi</sup> See SBCC, "Federal Reforms Usher Open Season for Racial Profiling in Border Communities," (Dec. 8, 2014), available at <http://soboco.org/federal-reforms-ushers-open-season-for-racial-profiling-in-border-communities/>; Chris Rickerd, "A Dangerous Precedent: Why Allow Racial Profiling at or Near the Border?" (Dec. 8, 2014), available at <https://www.aclu.org/blog/immigrants-rights-racial-justice/dangerous-precedent-why-allow-racial-profiling-or-near-border>
- <sup>xxii</sup> See, e.g., Frances Burns, "Rep. Cuellar: Texas cities on the Mexican border have less crime," UPI (Nov. 19, 2014) (quoting Congressman Cuellar: "Many people characterize the southern border as being unsafe but today's numbers paint a very different picture."), available at [http://www.upi.com/Top\\_News/US/2014/11/19/Rep-Cuellar-Texas-cities-on-the-Mexican-border-have-less-crime/3971416406308/](http://www.upi.com/Top_News/US/2014/11/19/Rep-Cuellar-Texas-cities-on-the-Mexican-border-have-less-crime/3971416406308/)
- <sup>xxiii</sup> See ACLU, "Strengthening CBP with the Use of Body-Worn Cameras," (June 27, 2014), available at <https://www.aclu.org/criminal-law-reform/strengthening-cbp-use-body-worn-cameras>
- <sup>xxiv</sup> See ACLU et al., *Recommendations to DHS to Improve Complaint Processing* (2014), available at [https://www.aclu.org/sites/default/files/assets/14\\_5\\_5\\_recommendations\\_to\\_dhs\\_to\\_improve\\_complaint\\_processing\\_final.pdf](https://www.aclu.org/sites/default/files/assets/14_5_5_recommendations_to_dhs_to_improve_complaint_processing_final.pdf); see also American Immigration Council, *No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse*

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(2014). available at <http://www.immigrationpolicy.org/special-reports/no-action-taken-lack-cbp-accountability-responding-complaints-abuse>

<sup>xxv</sup> Robbins, *supra*.



### **Statement for the Record**

**U.S. Senate Homeland Security & Governmental Affairs Committee**

**"Securing the Southwest Border: Perspectives from Beyond the Beltway"**

**March 17, 2015**

Founded in 1982, the National Immigration Forum (Forum) works to uphold America's tradition as a nation of immigrants. The Forum advocates for the value of immigrants and immigration to the nation, building support for public policies that reunite families, recognize the importance of immigration to our economy and our communities, protect refugees, encourage newcomers to become new Americans and promote equal protection under the law.

#### **Introduction**

The National Immigration Forum (the Forum) thanks the Committee for the opportunity to provide its views on this hearing to discuss the matter of American border security. While it is important to consider what impact the executive actions announced by the President addressing immigration may have on border security, we believe that passing broad immigration reform would have the most significant impact on border security. Heads of border agencies under both Republican and Democratic Administrations have stated that the best way to improve border security is to fix the immigration system by providing legal avenues for workers to enter the United States when needed and allow families to reunify. We urge the members of the Committee not to lose focus on the on-going need to fix our broken immigration system through broad reform that includes a path to eventual citizenship.

We believe the current conversation around border security and immigration reform is different. In the past two years, an alliance of conservative faith, law enforcement and business leadership has come together to forge a new consensus on immigrants and America. These relationships formed through outreach in the evangelical community, the development of state compacts, and regional summits across the country.

Due to these relationships the National Immigration Forum launched the Bibles, Badges and Business for Immigration Reform Network (BBB) to achieve the goal of broad immigration reform. Targeting key states through a combination of field events, media coverage and direct advocacy BBB and its partners have had more than 700 meetings with Members of Congress and their staffs and held 303 events in key congressional districts across 40 states in the past year.

We maintain relationships with the faith, business and law enforcement communities all across the country as well as with local non-governmental organizations. Our relationship with individuals outside of the Beltway, especially those in border states helps inform our views on border security. Based on conversations with these individuals, it is clear that our country needs effective enforcement that is humane and transparent and takes into account the impact on the 15 million people who live along our borders. Smart enforcement and border security, coupled with immigration reforms that promote legal immigration, can improve security at the border and make our ports of entry more efficient for commerce. Moreover, this will allow law enforcement and border officials to put fewer resources toward economic migrants and more resources toward the true criminal and terrorist threats.

Congress must avoid repeating the mistakes of the 1986 Immigration Reform and Control Act, which resolved the status of most undocumented immigrants but failed to provide for adequate future flow of legal immigrant labor. That oversight more than anything contributed to the continued flow of undocumented immigrants into the country. Last summer's influx of unaccompanied children and families was not due to a lack of enforcement at our border, but rather, it is because the antiquated immigration system is not set up to deal with the humanitarian crisis in Central American and the unexpected influx of women and children seeking refuge.

On Capitol Hill, "border security first" is a common refrain in any conversation about immigration reform. Senate bill S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, mandated that an additional \$38 billion be spent on border security and that the size of the border patrol be doubled. This approach failed to take into account the progress already made at the border and that U.S. border [cities are statistically safer](#) than other cities in their state. At the same time, S. 744 did set achievable conditions for legalization to move forward. The Forum has written extensively on the need for smart enforcement at our nation's borders. To see a more detailed analysis on smart enforcement at our borders please see the Forum's papers: "[What Does Smart and Effective Enforcement Look Like?](#)", "[The 'Border Bubble': A Look at Spending On U.S. Borders](#)" and "[Cut Here: Reduce Wasteful Spending on Immigration Enforcement](#)."

#### **Enforcement Measurements Today**

In recent years, there has been an incredible amount of progress improving the level of enforcement at our borders. Currently, the entire Southwest border is either "controlled," "managed," or "monitored" to some degree. A record 21,370 Border Patrol agents continue to be stationed at the border, a number that does not include the thousands of agents from other federal agencies, including the Drug Enforcement Agency (DEA), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Federal Bureau of Investigations (FBI), and other agencies, supplemented by National Guard troops.

651 of the 652 miles that the Border Patrol feels is operationally necessary has been built. The fence now covers almost the entire length of the border from California to Texas. There is double fencing in many areas. CBP relies heavily on technology in order to secure the United States' borders and ports of entry.

CBP now has more than 250 Remote Video Surveillance Systems with day and night cameras deployed on the Southwest Border. In addition, the agency relies on 39 Mobile Surveillance Systems, which are truck-mounted infrared cameras and radar. CBP has also sent Mobile Surveillance Systems, Remote Video Surveillance Systems, thermal imaging systems, radiation portal monitors, and license plate readers to the Southwest Border. CBP also currently operates three Predator B unmanned aerial drones from an Arizona base and two more from a Texas base, providing surveillance coverage of the Southwest border across Arizona, New Mexico, and Texas.

Many members of the Congress have echoed that the border must be secure before Congress addresses other parts of the broken immigration system, however they have yet to define what that means. The Bipartisan Policy Center recently released a report that should be viewed as a starting point. The report titled, "Measuring the Metrics: Grading the Government on Immigration Enforcement," examines already available data and identifies additional data that could be used to create an objective set of comprehensive, outcome-based performance measures to measure border security. The report points out we must move away from input measures, such as how many agents are stationed on the border or how many people are detained and move to outcome measures that assess achievement and progress. As the Senate examines the issue of border security, we encourage the Senate to look closely at the effectiveness and "return on investment" of spending on personnel and technology for border security.

Prior to August 2006, many persons who were apprehended at the border were released pending their immigration hearing. That practice was ended in August 2006, and now nearly all persons crossing the border illegally are detained. Immigration and Customs Enforcement (ICE) is now funded to hold 34,000 individuals in detention at any given time. Over the course of the government's fiscal year 2013, ICE reported that it detained more than 441,000 individuals, an all-time high and 118,000 more than the 311,000 individuals who were detained in 2007. For fiscal year 2014, ICE reported that it had removed nearly 316,000 persons, and is now well over 2 million for President Obama's presidency. To read more on how the 2007 benchmarks have been met, please read the Forum's paper "[Immigration Enforcement Today: 2007 Reform Goals Largely Accomplished](#)." Last year ICE chose to begin family detention in the Southwest in response to last year's influx of unaccompanied children and families. Most recently ICE opened a large detention facility in Dilley, Texas which will eventually have 2400 beds. According to the President's FY16 Budget family detention beds will cost just under \$348 per bed per day. That means the Dilley facility could cost upwards of \$300 million every year.

This enormous buildup in enforcement has had a significant effect. There will always be periodic surges like we have seen this year in border crossings but apprehensions of individuals at the border — a measure used to estimate the number of people trying to cross the border illegally — reached 40-year lows in 2013.

Any additional increases in border security should be done in a smart and conscientious manner. Millions of dollars have been spent in the last decade as more money has been poured into border technology without metrics to show how effective these investments have been. In spite of this, the measurements we do have, show that our border is more secure than ever.



### **Land Ports of Entry Need Equal Consideration in Border Security**

Unfortunately, most of the conversations about border security focus between the Ports of Entry, but the Ports are an important part of our border and national security, as well as our economic security, facilitating billions of dollars in international trade each day.

Trade and commerce at U.S. land ports of entry (POEs) have been increasing exponentially, especially across the southwestern border. The United States is Mexico's top trading partner, and Mexico is the United States' second largest export market and third largest trading partner.<sup>1</sup> In 2010, the value of cross-border travel at the U.S. land ports and exports with Mexico and Canada totaled more than \$791 billion.<sup>2</sup> In addition, more than 13,000 trucks bring over \$630 million worth of goods into the U.S. from Mexico every day.<sup>3</sup> Meanwhile, three out of four of all legal entries into the U.S. occur at an official border crossing, which also translates into billions spent on tourism.<sup>4</sup> The revenue gained from trade at the border generates jobs for Americans not just in border-states but all over the nation where land exports and imports reach. Customs and Border Patrol Field Operations, which oversees the flow of commerce at the ports, is understaffed. There are often long wait times to cross the border, which can detract from efficient commerce exchange, lead to billions of dollars in spoiled goods and can deter people from coming for tourism. According to the Houston Chronicle, wait times at ports of entry can take over five hours at peak times, and Bloomberg estimates the average wait is just over an hour at all times.<sup>5</sup>

Moreover, a 2012 Texas Border Coalition report found that because enforcement resources have been so focused *between* ports of entry, individuals illegally entering the U.S. between the land ports of entry have a 90 percent chance of being apprehended, but those entering illegally through a land port have a 28 percent chance of being apprehended.<sup>6</sup> The understaffing also leaves land ports more susceptible to transnational drug and weapons smuggling. This startling report, coupled with long wait times at ports of entry that hinder the flow of commerce and trade from

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<sup>1</sup> The Wilson Center, Erik Lee and Christopher Wilson, "The State of Trade, Competitiveness and Economic Well-being in the U.S.-Mexico Border Region," available at [http://www.wilsoncenter.org/sites/default/files/State\\_of\\_Border\\_Trade\\_Economy\\_o.pdf](http://www.wilsoncenter.org/sites/default/files/State_of_Border_Trade_Economy_o.pdf).

<sup>2</sup> U.S. Department of Transportation Bureau of Transportation Statistics, Trans-Border Freight Data, available at <http://www.bts.gov/programs/international/transborder>.

<sup>3</sup> U.S. Department of Commerce, Bureau of the Census, Foreign Trade Division annual report, 2010, Washington, D.C.

<sup>4</sup> GAO-08-329T: *Despite Progress, Weaknesses in Traveler Inspections Exist at Our Nation's Border crossings*, Statement of Richard M. Stana, Director Homeland Security and Justice Issues, Washington, DC, January 3, 2008, available at <http://www.gao.gov/assets/120/118716.pdf>.

<sup>5</sup> Transportation management system company, "US-Mexico border delays impact carriers' regional distribution activities" available at <http://appian.tnwsystems.com/industry-news/us-mexico-border-delays-impact-carriers-regional-distribution-activities>.

<sup>6</sup> Texas Border Coalition, *Without Strategy: America's Border Security Blunders Facilitate and Empower Mexico's Drug Cartels*, January, 2012, available at [http://www.texasbordercoalition.org/Texas\\_Border\\_Coalition/Welcome\\_files/TBC%20Report-Without%20Strategy-Final.pdf](http://www.texasbordercoalition.org/Texas_Border_Coalition/Welcome_files/TBC%20Report-Without%20Strategy-Final.pdf).

Mexico, makes clear the need for improvements at our ports of entry, including infrastructure, personnel and technology.

In a positive move, the FY 2014 budget allocated funds to hire new officers, including 2,000 to be stationed at the busiest ports of entry to help decrease wait times and speed the flow of traffic,<sup>7</sup> and the President's FY 2015 budget requested funding for an additional 2,000.<sup>8</sup> However, it is unclear whether these additions are sufficient for CBP to succeed in its mission of facilitating trade and tourism at POEs.

### **Agent Training and Oversight**

All of the efforts described above have demonstrated that the government can, and is capable, of enforcing our immigration laws. Yet, there are still smart, practical enforcement measures that can be adopted to further strengthen border security, including providing adequate border agent training, providing adequate resources and infrastructure at U.S. land ports of entry, establishing sufficient oversight mechanisms and procedures to hold agents accountable for misconduct, and effective use of border technology.

As Congress and CBP identify POEs where infrastructure should be expanded, begin awarding large contracts, and increase staff at ports of entry, corresponding levels of additional oversight must be built in. Between 2005 and 2012, there were 2,170 reported incidents of misconduct by CBP, and a total of 144 current or former CBP employees were arrested or indicted for corruption-related activities.<sup>9</sup> In a report examining CBP's efforts to mitigate that problem, GAO found that while CBP has implemented integrity programs, including standardized training throughout agents' careers, it still struggles with managing and overseeing these programs—in part because rapid hiring has made it difficult for the agency to keep up. A December 2011 report from the Government Accountability Office (GAO) found that CBP does not have reliable training completion records to ensure officers received required training. It also found that more than 4,000 officers had not completed required courses in immigration fundamentals, immigration law and agricultural fundamentals.<sup>10</sup> A 2011 report by Appleseed concluded that CBP agents are not adequately screening unaccompanied alien children apprehended at POEs from contiguous countries to ensure they are not a potential victim of trafficking and have no claim to asylum.<sup>11</sup>

<sup>7</sup> Laura Martinez, \$225M to hire more CBP officers, The Brownsville Herald (Jan. 17, 2014), available at [http://www.themonitor.com/news/local/article\\_6b5a6786-7fd8-11e3-90cc-0019bb30f31a.html](http://www.themonitor.com/news/local/article_6b5a6786-7fd8-11e3-90cc-0019bb30f31a.html).

<sup>8</sup> Budget-in-Brief Fiscal Year 2015, U.S. Dep't. of Homeland Security, <http://www.dhs.gov/sites/default/files/publications/FY15BIB.pdf>.

<sup>9</sup> U.S. Gen. Accounting Office, Border Security: Additional Actions Needed to Strengthen CBP Efforts to Mitigate Risk of Employee Corruption and Misconduct (2012), available at <http://www.gao.gov/products/GAO-13-59>.

<sup>10</sup> Government Accountability Office, *Border Security: Additional Steps Needed to Ensure That Officers Are Fully Trained*, December 2011, available at <http://www.gao.gov/assets/590/587314.pdf>.

<sup>11</sup> Appleseed, "Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors," 2011 available at, <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>.

However, over the past year CBP has made significant strides toward creating a more transparent and accountable agency, with newly confirmed Commissioner Gil Kerlikowske deserving much of the credit. In the past year, CBP 1) has begun experimenting with body-worn cameras on its agents, 2) has committed to investigating past use of force claims where inadequate investigations took place, 3) has created an Integrity Advisory Panel, giving the Office of Internal Affairs more authority to investigate use of force complaints and 4) has publicly released use of force policies and an outside report by the Police Executive Research Forum (PERF). These steps are a significant step in the right direction and should be applauded, however, more can be done. Last year was one of the deadliest in terms of use of number of individuals killed by CBP agents. CBP still needs to implement additional mechanisms to ensure proper training and oversight within its ranks.

CBP committed to addressing this problem by completing a comprehensive integrity strategy, which would coordinate integrity-related initiatives across all CBP components, including Office of Internal Affairs, Office of Field Operations, and Border Patrol, and would integrate prevention, detection, and investigative initiatives for each. Although the agency set a deadline for finalizing the strategy by May 2013 in its FY 2009-14 Strategic Plan and GAO recommended finalizing it in 2012, it remains unfinished.<sup>12</sup> CBP officials stated in July 2013 that the strategy was undergoing final clearance within the agency but since then there have been no announcements. CBP must demonstrate its commitment to improving its ethical track record by completing and fully implementing the strategy. The Committee should require CBP to report regularly to Congress and the public its progress in developing and implementing a comprehensive integrity strategy. Another major step CBP can take is to fix its complaint process as part of a DHS agency-wide complaint system. Currently, CBP is reviewing its existing complaint process and will hopefully finish that review in the near future. There have been some small positive changes to the current CBP complaint system, however, it still remains inadequate and fraught with obstacles that make it extremely difficult for individuals to file complaints effectively and for CBP to manage them. The confusion begins with determining where to submit a complaint—because there is no central point of contact at CBP,<sup>13</sup> complaints often go to the wrong entity within DHS. As a result, complainants often wait years for a response. Within DHS, there is no mechanism for properly tracking complaint trends and using that information to analyze policies, procedures, and budgets. For example, in a recent audit, the OIG found that CBP's case management system for use of force incidents and complaints was inadequate, and that CBP should better analyze use-of-force data to inform Departmental decision-making.<sup>14</sup> CBP should develop a transparent, universal, multilingual complaint process, easily accessible both online and via a toll-free number,

<sup>12</sup> U.S. Gen. Accounting Office, *U.S. Customs and Border Protection Provides Integrity-Related Training to Its Officers and Agents throughout Their Careers* (2013), available at <http://www.gao.gov/products/GAO-13-769R>.

<sup>13</sup> CBP's recent guidance on nondiscrimination directs individuals to file complaints with six different Departmental entities. U.S. Customs and Border Protection, "CBP Policy on Nondiscrimination in Law Enforcement Activities and all other Administered Programs," (April 2014), available at [http://cbp.gov/linkhandler/cgov/admin/fl/eco/funded\\_programs/nond\\_in\\_enf.ctt/nond\\_in\\_enf.pdf](http://cbp.gov/linkhandler/cgov/admin/fl/eco/funded_programs/nond_in_enf.ctt/nond_in_enf.pdf)

<sup>14</sup> DHS Office of Inspector General, "CBP Use of Force Training and Actions To Address Use of Force Incidents," (September 2013), available at [http://www.oig.dhs.gov/assets/Mgmt/2013/OIG\\_13-114\\_Sep13.pdf](http://www.oig.dhs.gov/assets/Mgmt/2013/OIG_13-114_Sep13.pdf).

and prominently displayed in multiple languages at all detention facilities, ports of entry, interior checkpoints, and marked CBP vehicles.

### **Recommendations**

The National Immigration Forum recommends the following:

- **Fix our broken immigration system:** Passing broad immigration reform would have the most significant impact on border security. Heads of border agencies under both Republican and Democratic Administrations have stated that the best way to improve border security is to fix the immigration system by providing legal avenues for workers to enter the United States when needed and allow families to reunify.
- **Do not focus only on enforcement:** A singular focus on border enforcement will not result in truly secure borders. The U.S. population as well trade and commerce at U.S. land ports of entry have been increasing significantly in recent years necessitating more nuanced border policies. Certainly, we must do what we can to ensure that real threats cannot exploit our borders to do harm. But smart enforcement and border security, coupled with immigration reforms that promote legal immigration, can improve security at the border and make our ports of entry more efficient for commerce.
- **Provide additional infrastructure and personnel at ports of entry:** Customs and Border Patrol Field Operations, which oversees the flow of commerce at the ports, is under staffed. There are often long wait times to cross the border, which can detract from efficient commerce exchange, lead to billions of dollars in spoiled goods and can deter people from coming for tourism.
- **Require additional training and oversight of CBP:** As the nation's largest law enforcement agency CBP should be trained and held to the highest law enforcement standards. Systemic, robust and permanent oversight and accountability mechanisms for CBP must part of any discussion on border security which includes equipping all CBP personnel with body-worn cameras and reforming DHS complaint systems to provide a transparent, uniform process for filing complaints
- **Develop new border security metrics:** DHS needs to adopt transparent metrics to measure border security. The current lack of publicly available and consistent metrics has greatly contributed to the public's lack of clarity surrounding our nation's border security. It has also made it difficult for members of Congress to hold the agency accountable and to know what additional resources are needed or unnecessary in order to secure our border.

### **Conclusion**

Continued advancements in enforcement will depend on broader reforms to our broken immigration laws so that enforcement resources can target real threats. The American people want better immigration policy. Multiple national polls over the last month show solid support for solutions that include, in addition to reasonable enforcement, creating improved and new legal channels for future immigrants and establishing tough but fair rules to allow undocumented immigrants to stay and continue to work in the U.S. and eventually earn U.S. citizenship. We cannot simply spend or enforce our way to a solution on illegal immigration. Border security, while important, is only part of the picture. Immigration reforms that promote legal immigration and smartly enforce immigration laws can improve the security at the border, drying up the customers for criminal enterprises that prey on migrants, and letting our border agencies focus on more dangerous threats such as terrorists, drugs, weapons and money.

Our immigration problem is a national problem deserving of a national, comprehensive solution. The Forum looks forward to continuing this positive discussion on how best to move forward with passing broad immigration reform into law.



April 9, 2015

The Honorable Ron Johnson  
Chairman, Committee on Homeland  
Security and Governmental Affairs  
U.S. Senate  
Washington, D.C. 20510

The Honorable Thomas Carper  
Ranking Member, Committee on Homeland  
Security and Governmental Affairs  
U.S. Senate  
Washington, D.C. 20510

Dear Mssrs. Johnson and Carper:

Thank you for your question for the record related to the committee's March 17 hearing "Securing the Southwest Border; Perspectives from Beyond the Beltway."

Question: 1. During the hearing, there was some discussion about whether the overwhelming majority of drug smuggling activity occurs through the ports of entry. While we must address drug smuggling no matter where it occurs, it is important that we better understand the vulnerabilities being exploiting by drug trafficking organizations so that we may build stronger counternarcotic strategies and better prioritize our resources. Can you please elaborate on where you believe the majority of drug smuggling into the United States occurs and provide the Committee with any information that may support your position?

Answer: Law enforcement officials on the US-Mexico border believe that drugs that take up little space and weight—methamphetamine, cocaine, heroin —come into this country mainly through the legal Ports of Entry on the U.S. Mexico border, in passenger vehicles and cargo containers. The heavier, bulkier marijuana is smuggled in mainly between the Ports of Entry.

This common knowledge is substantiated by the U.S. Justice Department's 2011 National Drug Threat Assessment, which states, "Mexican TCOs (transnational criminal organizations) continue to rely primarily on California and South Texas ports of entry (POEs) to smuggle cocaine, heroin, and methamphetamine across the border and on remote areas between POEs in Arizona to smuggle large quantities of

marijuana. Traffickers generally smuggle smaller loads of cocaine, heroin, and methamphetamine in noncommercial vehicles (cars, SUVs, and pickup trucks) across the border to minimize the risk of losing large loads."

<http://www.justice.gov/archive/ndic/pubs44/44849/44849p.pdf>.

The most recent publicly available data on drug seizures from the Department of Homeland Security reflects this general division: 72 percent of the methamphetamine, cocaine, and heroin that is intercepted is captured coming through the POEs; 78 percent of the marijuana is captured between the ports.

|                                                             | 2005        | 2006        | 2007        | 2008        | 2009        | 2010        | 2011        |
|-------------------------------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| <b>Cocaine Seizures @ US-Mexico Border (pounds)</b>         |             |             |             |             |             |             |             |
| Between Ports                                               | 10,853      | 13,899      | 12,162      | 8,419       | 10,432      | 9,091       | 7,461       |
| At the Ports                                                | 24,242      | 28,261      | 23,093      | 18,040      | 19,081      | 24,498      | 23,726      |
| <b>Methamphetamine Seizures @ US-Mexico Border (pounds)</b> |             |             |             |             |             |             |             |
| Between Ports                                               |             | 336         | 414         | 156         | 1,119       | 1,011       | 1,704       |
| At the Ports                                                | 3,292       | 3,450       | 1,997       | 2,315       | 5,037       | 6,391       | 9,347       |
| <b>Heroin Seizures @ US-Mexico Border (pounds)</b>          |             |             |             |             |             |             |             |
| Between Ports                                               | 184         | 246         | 35          | 85          | 240         | 251         | 328         |
| At the Ports                                                | 354         | 595         | 596         | 1,062       | 995         | 1,563       | 2,195       |
| <b>Marijuana Seizures @ US-Mexico Border (pounds)</b>       |             |             |             |             |             |             |             |
| Between Ports                                               | 1.3 million | 1.5 million | 1.8 million | 1.7 million | 2.7 million | 2.3 million | 1.9 million |
| At the Ports                                                | 480,000     | 448,000     | 562,000     | 551,000     | 598,000     | 522,000     | 559,000     |

Source: U.S. Border Patrol and Customs and Border Protection (CBP) data provided to the Center for Investigative Reporting in response to Freedom of Information Act requests.

<http://static.apps.cironline.org/border-seizures/>

Not unlike the strategies used by the TCOs to smuggle marijuana between the ports, the TCO leader who controls the *plaza* on the Mexican side of the POE will station observers, equipped with communications equipment, to monitor the inspectors at the ports. When a team of inspectors is fatigued on a long shift extended by overtime, which happens frequently due to the chronic understaffing of the ports, the plaza boss will send a decoy vehicle through the POE, carrying a small amount of contraband poorly concealed. When a canine or inspector flags the vehicle for secondary inspection, the TCO boss will send a convoy of vehicles, in which the

contraband is more carefully concealed, through the POE while the fatigued inspection team is distracted by the decoy. Once through the port, the vehicles depart the border area as swiftly as possible to get to their distribution hubs in Chicago, St. Louis, Atlanta or elsewhere.

If the Congress wishes to confront the national security threat on our nation's southern border, it must challenge the TCO's business where it is the most vulnerable: at the Land Ports of Entry. Congress can move the nation closer to this goal by increasing the number of Customs and Border Protection (CBP) inspectors (the men and women in blue) and improving the technology and infrastructure at the ports.

With specific regard to technology, the foundation of success should be built on expanded bandwidth, on which many of the new systems depend, and effective training. It is unacceptable to border communities that CBP radio users need additional training to enable them to use their radios competently, as suggested by a recent Government Accountability Report.

<http://www.gao.gov/assets/670/669171.pdf>

These improvements in inspection capabilities at the POE's will not only attack the TCO's at their weak spot: they will have the ancillary benefit of improving the U.S. economy and providing additional federal revenue. Based on a study by the National Center for Risk and Economic Analysis of Terrorism Events - University of Southern California (CREATE), the Department of Homeland Security estimates that for every 1,000 CBP Officers hired, the following outcomes can be expected:

- Total enforcement actions would increase by 23,000;
- Drug seizure values would increase by \$40 million;
- Currency seizure values would increase by \$2.75 million;
- Trade penalty assessments would increase by \$7.85 million;
- IPR seizures would increase by \$2.5 million;
- Liquidated damage assessments would increase by \$42 million;
- GDP would increase by \$2 billion; and
- Job growth of more than 33,000.

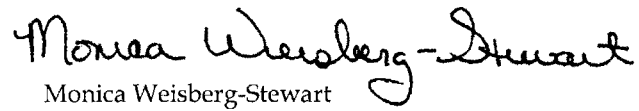
Source: U.S. Department of Homeland Security Budget-in-Brief, Fiscal Year 2014.

[https://www.dhs.gov/sites/default/files/publications/MGMT/FY%202014%20BIB%20-%20FINAL%20-508%20Formatted%20\(4\).pdf](https://www.dhs.gov/sites/default/files/publications/MGMT/FY%202014%20BIB%20-%20FINAL%20-508%20Formatted%20(4).pdf)

On behalf of the Texas Border Coalition, the collective voice of Texas border mayors, county judges, and communities on issues that affect our quality of life in the Texas-Mexico border region, I thank you again for your invitation to share this important knowledge with the Senate Homeland Security Committee.



Sincerely,

A handwritten signature in black ink that reads "Monica Weisberg-Stewart". The signature is written in a cursive style with a large, stylized 'M' and a long, sweeping underline.

Monica Weisberg-Stewart  
Texas Border Coalition  
Chairwoman, Committee on Immigration and Border Security



## **SECURING THE BORDER: ASSESSING THE IMPACT OF TRANSNATIONAL CRIME**

**TUESDAY, MARCH 24, 2015**

U.S. SENATE,  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:01 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Lankford, Ernst, Carper, Tester, Booker, and Peters.

### **OPENING STATEMENT OF CHAIRMAN JOHNSON**

Chairman JOHNSON. Good morning. This hearing is called to order. I want to welcome all the witnesses and thank you for your thoughtful testimony. I see a lot of work went into it, and I certainly appreciate reading all the information that was contained therein.

This is our second hearing having to do with the security of the United States' borders. As we found out in our last hearing, it was pretty prominent in testimony that the border is not secure. I would agree with that assessment. I think we also are coming to realize how incredibly complex this problem is.

I come from a manufacturing background, and I have solved a lot of problems, and there is actually a process you go through to solve a problem. It starts with really understanding, ascertaining, admitting to the reality. A lot of times reality is not particularly fun to acknowledge or have to face, but if you are going to solve a problem, you have to understand the reality of the situation, and you have to accept it.

The next step in the problem-solving process is to establish achievable goals. Set yourself up for success, not failure. Once you do those two important first steps, then you can start crafting strategies.

I think in the past we have bypassed those first two steps, and as a result, I read—and I want to read it again this list of bills that we passed in Congress to try and address this problem, and it started out in 1986 with the Immigration Reform and Control Act. Back then, we recognized we had a problem, and the unauthorized population in America was about 3.9 million. We progressed to the 1990 Immigration Act; about 3.5 million people here illegally. In 1996 we passed the Illegal Immigrant Reform and Immigration Re-

sponsibility Act. By that point in time, there were 6.3 million people in the country illegally.

In 2001, as part of the PATRIOT Act, we passed a law to require an entry-exit system. By that time, there were 9.6 million people in the country illegally.

In 2002, we passed the Enhanced Border Security and Visa Entry Reform Act, and now we are up to about 10.3 million people in the country illegally.

In 2004, the Intelligence Reform and Terrorism Prevention Act was passed, about 10.9 million people in the country illegally.

In 2006, the Secure Fence Act, 11.7 million.

I just want to stop there for 2 seconds. As I have thrown myself into this problem, really trying to recognize the reality, I asked my staff members to print me out the Secure Fence Act because I wanted to study that piece of legislation. You do not read a bill. You have to study it. And so I wanted to spend a weekend really going over the Secure Fence Act so I could really understand the complexity of it and figure out what we can do to do a better job of that.

Well, I did not need the weekend. I only needed 5 minutes, because the Secure Fence was two pages long. That obviously did not work.

And then in 2007, we had the 9/11 Commission's Recommendations Act, and, again, our illegal population then stood at about 12 million.

I just point out the fact that we have passed bill after bill after bill, and we have not solved the problem. The definition of insanity is repeating the same thing over and over again expecting different results.

So I want to address this problem the right way, recognizing reality, that this hearing is really about trying to lay out the reality, and a very important component, maybe the most important component of this problem, transnational criminal organizations, drug trafficking, human trafficking. Terrible problems.

I do have a written statement that I will ask to be included in the record, without objection.<sup>1</sup>

I just want to quote from a report on Operation Strong Safety. This was a report given to the 84th Texas Legislature and the Office of Governor on January 28, 2015, that summarizes the problem.

First of all, in this report it says, "There is ample and compelling evidence that the Texas-Mexican border is not secure." And then they go on: "The ascension of the Mexican cartels as the State's and Nation's most significant organized crime threat and Mexico's most significant domestic security threat is directly attributable to a porous U.S.-Mexican border and an unending demand in the United States for illegal drugs, forced labor, and commercial sex."

I think that kind of encapsulates, based on the testimony I was reading, what we are going to be talking about today. And, again, it is about laying out the reality of the problem, which is going to be the first step in solving it.

<sup>1</sup> The prepared statement of Chairman Johnson appears in the Appendix on page 465.

So, with that, I will turn it over to our very capable Ranking Member for some opening comments.

#### **OPENING STATEMENT OF SENATOR CARPER**

Senator CARPER. Thanks, Mr. Chairman. Thanks for bringing us together today, and our heartfelt thanks to all of you. It is especially good to see you again, General McCaffrey.

I just want to comment briefly on what the Chairman has said. One of the things I learned a long time ago was if you want to solve problems, you do not just address the symptoms of the problems; you address the root causes of the problems. And among the root causes of these problems are our addictions in this country to methamphetamines, heroin, cocaine, and the like. And among the root causes of this problem, because of our addiction, it creates a culture of violence, and not just in Mexico but in the Central American nations, that we contribute directly to. And if you and I were raising our kids down in those countries—and I have been there to three nations in the Iron Triangle—I would want to get out of there, too, and I would want to get my kids out of there, too. And if we want to be successful, those are the kinds of root problems we have to address.

Today I just want to say that we had a hearing a week ago, and we are having a series of hearings this week. Last week, we heard from folks who live and work along the southwest border about some of the border security challenges that impact their communities. And today we will continue that conversation and dig even deeper into the transnational crime that occurs along our borders and throughout our country.

Over the course of the last several years, I have made a number of trips to both our Southern and Northern borders. Most recently, I had the pleasure of joining our Chairman and Senator Sasse on a trip to the Rio Grande Valley in South Texas. During these trips, we saw firsthand the dedication and expertise of the men and women who put their lives on the line each day to keep our borders secure.

And because of the efforts of these brave men and women, along with the quarter of a trillion dollars that American taxpayers have spent on border security over the last 10 years, we have made some progress, I think real progress, in securing our borders. Is it perfect? No. Are there people who still get through, bad guys, contraband? Of course. Can we do better? Yes.

But I especially appreciated, General McCaffrey, you pointing out in your testimony that, “by many measures, the U.S.-Mexico border is more secure than it has ever been.” And I agree with that. And to say that, you do not just stop where we are. It is not a time to pat ourselves on the back.

But since 2003, for example, we have more than doubled the size of the Border Patrol. We have constructed more than 600 miles of new fencing and deployed sophisticated cameras, sensors, and radar across much of our border with Mexico. Today we are operating drones and aerostats high in the sky, as well as fixed and mobile observation towers, providing situational awareness for our agents on the ground.

Yet while many border communities are among the safest towns in America, we know that there is still much work to be done. And we know that transnational criminal organizations are indeed a real danger. Transnational crime, however, is not just a border issue. It is much broader than that. It is a national security issue, and it is an issue that touches all of our communities.

For example, transnational crime can touch our friends and families in the form of drug addiction. It can victimize thousands who are brought into this country for sex trafficking or for slave labor. It can hurt our businesses and bring crime and violence to our neighborhoods. And it has the potential to bring national security threats to our borders, such as persons with possible terrorist ties.

Today's transnational criminal organizations are agile and they are global in reach, and they will do just about anything, and will stop at almost nothing, to carry out their illicit and very lucrative operations. So how do we disrupt and dismantle these criminal organizations?

I believe we must continue to support the men and women combating these criminal networks along our borders and throughout our communities. As my colleagues have heard me say before, I am a strong believer in providing our border personnel with "force multiplier" technology that will help them do their jobs more effectively. We also need to share information better, more effectively—particularly intelligence—more efficiently so that we can act quickly and leverage resources across the Federal, State, and local level.

I look forward to hearing from our witnesses today about what tools and resources are needed to better secure both our Southern and our Northern borders.

That said, I believe our homeland defenses should not begin on the "1-yard line" of our borders, as General John Kelly, Commander of U.S. Southern Command and Department of Homeland Security (DHS) Secretary Jeh Johnson have stated before. In many cases, it should begin much farther away.

Many of the criminal organizations that operate along our southwest border have roots deep inside Mexico and throughout Latin America. In parts of Central America, we know that gangs and other criminal organizations continue to threaten prosperity. Some might even say they threaten democracy itself in the places where they operate.

That is why it is so important that we seize this window of opportunity to help our neighbors in Central America grapple with a variety of security, governance and economic challenges. And by doing so, we will address one of the root causes of transnational crime and enhance the security of our Nation. In closing, let me just say we will be focusing on this issue at tomorrow's hearing, so I will expand upon this topic much more at that time.

Finally, I believe we can address transnational crime in one other very important way, and that is by confronting America's insatiable appetite for illegal drugs. Our demand for illegal drugs fuels the power, the impunity, and the violence of criminal organizations around the globe. We must continue to focus on our Nation's addiction to drugs and continue to identify effective programs to reduce this crippling threat to our Nation's future.

And, with that, I again want to thank our witnesses. Thank you, Mr. Chairman, for bringing this together, and let us bring it on. Thank you.

Chairman JOHNSON. Thank you, Senator Carper.

A closing comment here. I would draw people's attention to the photo that I actually got the day after our border trip. I stayed around and was given a tour of the border with a number of off-duty officers, and this one was given to us by a Mission, Texas, police officer. It really does show the impunity—and I have copies in front of everybody's station here. We are a family friendly Committee here, so we have blurred out the specific hand gesture, but this is a basic turnback. This is the middle of the day. Drug traffickers load up a raft with—you can see these 100-pound bales of marijuana, and the raft is tied onto a truck, and so if they meet resistance on the other side, they just quickly pull them back over the border.

Now, apparently we frustrated these individuals here, but it just shows the impunity with which the drug cartels operate on the Mexican side of the border. They are not afraid of getting caught, and they are a little upset that Border Patrol agents foiled their drug trafficking, at least for that day.

But, anyway, it is the tradition of this Committee to swear in witnesses, so if everybody will stand and raise your right hand. Do you swear that the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

General McCaffrey. I do.

Mr. TORRES. I do.

Ms. KEMPSHALL. I do.

Mr. MARTINEZ. I do.

Mr. COSTIGAN. I do.

Chairman JOHNSON. Thank you.

Our first witness will be General Barry R. McCaffrey. General McCaffrey served in the U.S. Army for 32 years and retired as a four-star general. At retirement, he was the most highly decorated serving general, having been awarded three Purple Heart medals, two Distinguished Service Crosses, and two Silver Stars for Valor.

After leaving the military, General McCaffrey served as the Director of the White House Office of National Drug Control Policy from 1996 to 2001.

General McCaffrey, thank you sincerely for your service, and we look forward to your testimony.

**TESTIMONY OF GENERAL BARRY R. McCaffrey,<sup>1</sup> USA (RET.);  
FORMER DIRECTOR (1996-2001) AT THE OFFICE OF NA-  
TIONAL DRUG CONTROL POLICY**

General McCaffrey. Well, thank you, Mr. Chairman, and also Senator Carper and the other Members of the Committee. I really mean it that I think your leadership is going to pay off on this issue. There is inadequate attention being paid to what is in essence a huge and complex and worsening problem, and that is on our Southern and Northern borders. And I think your opening statements really brought to life much of what I personally have learned about the issue over the years.

Let me just, if I may, publicly remind myself and the Committee, I spent 20 years looking at this issue. In 1994, Secretary Bill Perry and I were the first two Secretary of Defense (SECDEF) and U.S. Southern Command (SOUTHCOM) commander to ever set foot in Mexico, which is quite a comment. We had been to places like North Korea and Russia, but never had a Secretary of Defense set foot in Mexico City. And I have been watching that issue quite closely since, and for the 5 years I was Drug Policy Director, I had an annual trek from sea to shining sea, where the Mexicans and the U.S. authorities would meet across the country and try and hone in on some of these challenges we were facing.

I was on President Calderon's International Advisory Committee, and I might add I have invested a considerable amount of effort in the last several weeks getting ready for this hearing, to include hours on the telephone interviewing trusted contacts along that border—sheriffs, ranchers, Border Patrol, engaged citizens, reporters, et cetera.

I might also add I am not affiliated with either political party and have loyally served administrations—Bush 41, one of my heroes, President Bush.

Some quick observations, if I may.

No. 1, clearly we have to acknowledge conditions have improved immeasurably since I started looking at this in 1994. We had 4,000 Border Patrol. The border was essentially wide open. You could drive across it in an 18-wheeler truck, and people literally did just that.

It also was not all that much a problem 25 years ago that there was insecurity. These were illegal migrants, but they were people looking for work. Ranchers' wives gave them sandwiches on their way north. So the environment on the border that created the conditions of insecurity had been longstanding.

Yesterday I went and got an update from Customs and Border Protection (CBP) and taped my personal thanks to the 60,000 men and women of Customs and Border Protection that you have resourced. Though times have changed, their integrity, courage, technology, manpower, the level of cooperation—we are going to hear more from Elizabeth Kempshall about the High Intensity Drug Trafficking Area's (HIDTA). The cooperation between local, State, and Federal law enforcement today compared to 20 years ago is simply unbelievable.

<sup>1</sup> The prepared statement of General McCaffrey appears in the Appendix on page 469.



And I might also add I think Secretary Johnson, and, in particular, Commissioner Kerlikowske, we now have a professional cop running CBP, and I think you are going to see a dramatic, continuing change in the law enforcement culture.

Second observation: Border security is not a United States problem. It is an international problem. You cannot do it without international partners. With Canada, it is pretty easy: 5,000 miles, the Canadians have world-class law enforcement, total cooperation. With Mexico, it is more of a challenge. And I would flag for your consideration my strong concern that we apparently have taken off the table discussions of drugs, crime, and insecurity with the Mexican Government and public, and I do not think we are going to move forward until we have greater resource support from Mexico, particularly their army and marine corps, but also Pena Nieto's attempt to build a new gendarmerie and Federal police. But I do think that the insecurity in Mexico is simply beyond belief, not just in the border communities but Monterrey all the way to the Southern border.

Third observation: There are two issues here that are the same sides to the same coin—or two sides of the same coin: Border Patrol, which we are going to talk about, and also sensible immigration policy. And, to be blunt, if you have 11.2 million unauthorized migrants, if your max deportation was 439,000 in a given year, if you get a half million every year still coming in, if half the illegals arrive by air and stay, then you cannot solve the problem by deportation. And, by the way, who would want to do that. These people run our agricultural system, our meat packing plants, daycare centers. They are a valued part of the workforce. So we have to, it seems to me, proceed at the same time with both solutions.

And, by the way, those 11.2 million illegal migrants in this country, bunches of them, are not Mexican or Central American. They are Indian high-tech people. And they are also the parents of 5.5 million U.S. citizen children. So there is no way out. We have to do both things at the same time.

Fourth observation: The U.S. major cities on the border—and eight of them I normally keep track of—are incredibly safe thanks to Customs and Border Protection, the Federal Bureau of Investigations (FBI), the U.S. Marshals Service, and State and local authorities. Just astonishing. El Paso is always the example. We serve up El Paso and Honolulu as being some of the safest cities in the Nation. We ought to be grateful for this. It did not come easy. And that was not the case years ago.

Fifth observation: The rural border areas are absolutely not secure. They are controlled by foreign criminal international cartels at times and places of their choosing. They are a humanitarian disaster. Hundreds die each year on that frontier.

And, by the way, I have seen attacks on people making that claim as if it was false data. It is literally hundreds of people die per year. I am not sure we even know. It is a drug crime disaster. Maybe we get 5 percent of the drugs. When you stop them at ports of entry (POE), they go to sea delivery, they go to air delivery, tunnels, backpacking, et cetera.

They are an environmental disaster. The Border Patrol cannot get permission from other Federal agencies to build helicopter

pads, access roads, fixed tower platforms, et cetera, and yet drug cartels move across the frontier and dump hundreds of metric tons a year of trash. They cut fences. They are a disaster.

There are places on the Arizona border, I just talked to a major rancher, a fifth-generation rancher, where, as he looks at his 5 miles of U.S. frontier, there are dozens of cartel scouts wearing camouflage uniforms with padded boots for non-tracker, with \$2,500 solar-powered, encrypted satellite phones, with AK-47s. That is who is in control of the border when they choose to do so. And the Border Patrol really has limited access to even get down there.

And I would just tell you, from talking to many of these citizens—I know you have had field hearings—they have come to hate their government for not protecting them on the frontier. It is just simply astonishing, the insecurity. And a lot of them, of course, are selling and getting out of there. And, in general, we have to watch. They are selling to Mexican cartels in some cases to control both sides of the border.

Another anecdote. A Border Patrol agent I talked to last week says, “Look, when I joined the force a few years back, my aunt and uncle, Mexican Americans, told me, ‘Come live with us until you find a place to live. But call us when you come home at night so we can get the garage door up and close it behind you because we do not want our neighbors seeing your uniform. You are going to leave, and we have to stay here.’” So insecurity we should not tolerate for American citizens on the border.

Seventh observation: The Border Patrol is not adequately resourced. I understand we have 60,000 people now in CBP and a tremendously enhanced presence. But I tell you, it is also a national security threat. There are 2.3 million men and women in the Department of Defense (DOD), 4.7 percent of GNP, the lowest percentage of any so-called war in our country’s history. But when it comes to the border, we simply cannot control this frontier as a civilized nation should do unless the agents have IR night vision devices, M4 carbines. There is not an M4 carbine for every agent, so they have to sign one out, and it will not be zeroed when you sign out a weapon out of a stack. We do not have enough fixed-tour surveillance sites. We do not have border fences everywhere we need them. There is a four-strand barbed wire fence along one of the most sensitive access routes into Arizona.

And then, finally, I do think we ought to recognize that the border is a national security threat. It is not one we ought to ask DOD to fix. I personally do not like to see the National Guard committed to that mission. They are supposed to be preparing to fight the country’s wars. Where we see an infrastructure lacking, a capacity lacking, we need to build Federal agencies commensurate with the responsibility we are giving them. And part of that is also Federal financing for State and local law enforcement.

I talk to sheriffs up and down that line that say, “Look, I detain people, I turn in a bill for \$800,000 bucks. A year later, with no explanation, I get back a check for \$40,000.”

Autopsy money. Bodies are not being autopsied simply because of the lack of funding out there on the frontier. So we have to sup-

port State and local law enforcement with the tasks they are facing.

As a general rule, clearly we ought to be proud of what we are seeing on the frontier, but there is a lot of work to be done, and I applaud the members of this Committee for bringing your attention and leadership to bear on the problem.

Thank you.

Chairman JOHNSON. Thank you, General.

Our next witness is John Torres. He is the President of Guidepost Solutions, LLC. Prior to joining Guidepost Solutions, Mr. Torres served as the Special Agent in Charge for Homeland Security Investigations (HSI) in D.C. and Virginia. He also has served as Acting Director of U.S. Immigration and Customs Enforcement (ICE); a Deputy Director of ICE; and the Deputy Assistant Director for Smuggling and Public Safety.

Mr. Torres.

**TESTIMONY OF JOHN P. TORRES,<sup>1</sup> FORMER ACTING DIRECTOR AND FORMER DEPUTY ASSISTANT DIRECTOR FOR SMUGGLING AND PUBLIC SAFETY AT U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. TORRES. Thank you, Mr. Chairman, Ranking Member Carper, and distinguished Members of this Committee. First of all, I want to thank you for this opportunity to discuss transnational crime and the impact that it has to our country as well as the threats to our border. As you mentioned, I served at the Department of Homeland Security and its predecessor agencies for 27 years, most recently here in our Nation's capital, where I was in charge of Homeland Security Investigations for about 3½ years.

Of those 27 years, 25 of those were as a Special Agent, and going back to the mid-1980s, where I was a Special Agent for the Immigration and Naturalization Service (INS) starting out in Los Angeles, where I was hired as a result of the Immigration Reform and Control Act from 1986 that increased the number of enforcement agents for the INS back at that time.

During my career, we have been focused on transnational criminal organizations at pretty much every critical phase of the cycle, including internationally, in cooperation with our foreign counterparts where transnational crime and terrorist organizations operate, at our Nation's physical borders and ports of entry, in coordination with U.S. Customs and Border Protection, where the transportation cells attempt to exploit America's legitimate trade, travel, and transportation systems; and throughout the cities in the United States; and then also at the various cities where criminal organizations earn substantial profits from smuggling and the transportation of illicit goods.

What I want to start off talking about is the impact that I saw over the course of my career with regard to national security. Back in 1997 through 2000, I was an INS agent assigned full-time to FBI headquarters in the bin Laden Unit. And this was before September 11, 2001. We focused on all threats related to al-Qaeda.

<sup>1</sup>The prepared statement of Mr. Torres appears in the Appendix on page 477.

Back in December 1999, we were working around the clock in response to a very credible threat that there was a terrorist plot to bomb U.S. landmarks during millennium celebrations. It was during this time that Ahmed Ressam was arrested, traveling under the alias of Benni Noris, while trying to enter the United States from the Canadian border in a rental car. In the trunk of that car were enough materials to make four medium-sized anti-personnel and car bombs.

During that time, Ressam was not cooperating with us, which really forced us to race against the clock at that time to potentially prevent a New Year's Eve attack at an unknown location. Later we found out that his intention was to bomb Los Angeles airport.

In his possession at the time, basically the pocket litter, were phone numbers back to New York City to an associate there that we traced to what turned out to be human smugglers that were operating from Montreal through Boston and New York City and crossing the Vermont border.

Back then, Ressam and his al-Qaeda-linked cell, based in Montreal, were using this human-smuggling ring to their advantage to gain entry into the United States for some of its operatives. So as early as 1999, al-Qaeda-linked terrorists were willing to use transnational criminal organizations to further their operations here in the United States.

One of the things that we did when I was at ICE to improve security at the borders, both the Southern border and the Northern border, as well as at ports of entry, was to establish the Border Enforcement Security Task Forces (BESTs). They currently operate in 35 locations throughout the United States, including Puerto Rico and Mexico. And they leverage over 1,000 Federal, State, and local law enforcement agents and officers representing over 100 law enforcement agencies. They basically provide a collocated platform where they can investigate intelligence-driven operations, and then they disrupt and dismantle those transnational criminal organizations operating at the border.

With regard to human trafficking and human smuggling, I have seen that for many years going back to my INS days in the 1980s. I have seen it with human traffickers, bringing people in from Asia. I have seen it take place on the Southern border. I have seen it come over from Eastern Europe. And what we see here is over the years these organizations have been responsible for tens of thousands of men, women, and children entering the country illegally each year. And this is really an international market that remains extraordinarily lucrative today.

Sadly, a significant number of those children are brought to the United States in the hands of ruthless smugglers placing them at risk. And, quite frankly, we saw this happen back in 2003 in Victoria, Texas, where dozens of smuggled immigrants—men, women, and children—were locked in a hot, airless tractor-trailer outside Victoria, Texas. Ultimately, 19 people died in that trailer because they were locked in it, including a 7-year-old boy. It was the deadliest case of human smuggling in the United States in 15 years at that time.

And then last year, we saw children that were entering the United States at increasingly alarming rates, unaccompanied chil-

dren. Some of those children were placed in the hands of those same smuggling organizations by adults and even some of their family members to seek a better life here in the United States. But, frankly, it is not humanitarian to induce children to put themselves in the hands of smugglers.

I am happy that you are working with the Federal agencies here to focus on those types of crimes, especially with transnational crime.

Some of these cases I have highlighted today are indicative of the impact that transnational crime can have in our local communities. I want to thank all the Members of this Committee for your work with our Federal law enforcement leaders to remain focused on combating transnational crime. And thank you again for the opportunity to appear before you today. I am pleased to answer any questions you may have.

Chairman JOHNSON. Thank you, Mr. Torres.

Our next witness is Elizabeth Kempshall. Ms. Kempshall has served as the Executive Director of the Arizona High Intensity Drug Trafficking Area since January 2011. From May 2007 until December 2010, Ms. Kempshall was a Special Agent in Charge of the Phoenix Field Division for the Drug Enforcement Administration (DEA), which encompasses the entire State of Arizona. Ms. Kempshall began her career with the DEA in 1984. Ms. Kempshall.

**TESTIMONY OF ELIZABETH KEMPSHALL,<sup>1</sup> EXECUTIVE DIRECTOR, ARIZONA HIGH INTENSITY DRUG TRAFFICKING AREA, OFFICE OF NATIONAL DRUG CONTROL POLICY**

Ms. KEMPSHALL. Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee, it is my privilege to address you today on behalf of the Arizona High Intensity Drug Trafficking Area's Executive Board concerning the current drug threats in Arizona and how these threats affect the rest of the country.

The Arizona HIDTA region is approximately 64,000 square miles and includes 372 miles of contiguous international border with Sonora, Mexico. The international border area consists of inhospitable desert valleys and rugged mountainous terrain, which are ideal for drug smuggling. The Arizona-Sonora corridor contains six international land ports of entry situated in Nogales, Naco, Douglas, Sasabe, Lukeville, and San Luis.

Six main interstate highways run through Arizona. Due to Arizona's geographical location and shared border with Mexico, all highways and roadways are exploited by Mexican drug-trafficking organizations to transport large quantities of illicit drugs.

Each year, the Arizona HIDTA Investigative Support Center conducts a comprehensive intelligence study to identify the new and continuing trends in the Arizona region. The Threat Assessment provides strategic intelligence to the Arizona HIDTA and its partners to assist in the development of drug enforcement strategies.

The Threat Assessment found that the Sinaloa Cartel presents the primary operational threat to Arizona, possessing vast resources to source, distribute, transport, and smuggle large amounts

<sup>1</sup> The prepared statement of Ms. Kempshall appears in the Appendix on page 487.

of cocaine, marijuana, heroin, and methamphetamine in and through Arizona. The Sinaloa Cartel and affiliated Mexican drug-trafficking organizations exploit well-established routes and perfected smuggling methods to supply drug distribution networks based in Arizona cities, which in turn supply drug networks throughout the United States. The assessment also found that from fiscal year (FY) 2012 through 2014, 451 drug seizures occurred outside of Arizona but had a documented Arizona nexus. The sheer volume of illicit drug seizures with an Arizona nexus further confirms how vital Arizona is to Mexican drug-trafficking organizations.

The smuggling organizations that operate along the Arizona-Mexico border deploy a variety of transportation methods, such as tractor-trailer trucks and vehicles outfitted with deep hidden compartments; stolen vehicles; ATVs; underground tunnels; ultralight aircraft; and backpackers to defeat law enforcement border defenses.

Just recently, nearly 13,000 pounds of marijuana were seized from a Mexican national driving a tractor-trailer through the Nogales port of entry. The marijuana was concealed inside boxes commingled with mechanical components. Another long-term investigation in Arizona resulted in a record seizure of 137 pounds of methamphetamine, 107 pounds of heroin, and \$50,000 in cash destined for Atlanta, Georgia.

Transportation and smuggling activities between the points of entry in inhospitable desert valleys separated by rugged mountainous terrain are equally important and ideal for drug smuggling. An extensive system of scouts armed with radios, solar-powered repeaters, cellular telephones, and weapons situated on high points along drug-trafficking routes are vital to the smuggling groups. Located in strategic positions in Mexico and as far as 75 miles into Arizona, scouts protect drug loads from law enforcement and rip-crews and redirect backpackers and vehicles to avoid law enforcement operations. The scouting networks provide a continuous view of law enforcement presence on both sides of the border, making easier to direct loads around law enforcement presence. The scout's role is fundamental to the drug organization's success in supplying drugs to U.S. cities.

Law enforcement operations that successfully disrupt and/or dismantle Arizona-based drug organizations directly impact the U.S. drug markets. The Arizona HIDTA is uniquely qualified to combat the immense drug-trafficking threat facing Arizona, for this threat is far too big for a single agency.

The Arizona HIDTA philosophy of cooperation and coordination is based upon enhanced information and resource sharing through collocated, collaborative Task Force Initiatives strategically stationed throughout the region. Under the coordination umbrella of the Arizona HIDTA, the participating law enforcement agencies eliminate duplicative operational and investigative programs and facilitate tactical, operational, and strategic intelligence sharing.

The Arizona HIDTA approach demonstrates that when traditional organizational barriers are overcome, Federal, State, local, and tribal law enforcement entities can better focus investigative

and intelligence resources in dismantling and disrupting the most dangerous and prolific drug-trafficking organizations.

Thank you for the opportunity to appear before you today and for the Committee's support for the HIDTA program. The Arizona HIDTA remains committed to facilitating cooperation among Federal, State, local, and tribal law enforcement through sharing intelligence and to supporting coordinated law enforcement efforts.

I will be glad to address any questions you may have at this time.

Chairman JOHNSON. Thank you, Ms. Kempshall.

Our next witness is Benny Martinez. He is the Chief Deputy Sheriff for Brooks County, Texas. Prior to this position, he served as a Texas State trooper. In 1990, Chief Deputy Martinez joined the narcotics service of the Department of Public Safety (DPS), which charged him with the overall direction of the State's enforcement efforts against illegal drug trafficking in Texas. Chief Deputy Martinez.

**TESTIMONY OF BENNY MARTINEZ,<sup>1</sup> CHIEF DEPUTY SHERIFF,  
BROOKS COUNTY, TEXAS**

Mr. MARTINEZ. Good morning, Chairman Johnson, Ranking Member Carper, Members of the Committee. Thank you for the invitation for me to speak to you today.

My name is Benny Martinez. I am the Chief Deputy in Brooks County. The county consists of five deputies and sheriff that is responsible for maintaining law and order within a rural region of 943 square miles that encompasses the county seat of Falfurrias. Outside of the city, the county consists primarily of privately owned ranchland. The sandy terrain is mostly vegetated with mesquite trees, scrub oaks, and prickly pear cactus. The total population for the county is roughly 8,500.

Brooks County has a checkpoint, which is one of the busiest checkpoints on U.S. 281, probably the busiest in the southwest corridor. It feeds on to cities as Houston, San Antonio, Austin, and Dallas, and other destinations throughout the interior of the United States.

Highway 281 is part of the gulf coast corridor, which is one of the most active drug-and human-smuggling corridors in the United States. The Falfurrias checkpoint was the busiest checkpoint in the country in regards to undocumented crosser apprehensions (until the surge of the undocumented minors last summer) and narcotic seizures. The current checkpoint facility will soon be replaced by a new one that will increase the number of primary lanes from three to eight.

Because of Brooks County's geographical location and the checkpoint, it faces unique challenges, and most of them is the fact that majority of the people are dropped off south of the checkpoint, and then they are walked across either east or west of the checkpoint. In other cases, local gang members or others seeking monetary gain who live in the county drive their human and drug loads through private ranches by having access to keys to locked property gates.

<sup>1</sup> The prepared statement of Mr. Martinez appears in the Appendix on page 494.

The sad reality is that many of those who are being led through the brush by the smugglers do not survive their demanding journey. In the past 6½ years the county has recovered 443 bodies of undocumented crossers. We estimate that we recover less than half of all those who perish. From 2008 to 2014, Brooks County has spent almost \$700,000 for body recoveries. That is half of our budget.

The Mexican cartels and the transnational and statewide gangs continue to increase the level of organized criminal activity in the Rio Grande Valley. They are very active into home invasions, felony invasions, extortion, kidnappings, sexual assaults of undocumented crossers, and the recruitment of Texas children to transport drugs, people, and stolen vehicles across the border.

Violent transnational gangs such as MS-13 gang members are in Texas and elsewhere. Since 2011, the number of MS-13 members encountered by U.S. Border Patrol (USBP) in the Rio Grande Valley sector has increased each year accelerating in 2014. This coincides with the illegal migration from Central America during the same period. In the fiscal year of 2014, MS-13 represented 43 percent of all gang encounters within the Rio Grande Valley sector approximately 11 percent of those were juveniles. In addition, there are at least three major Mexican-American gangs that are known to be active in our communities and throughout Texas if not the country.

There was one particular case that affected myself and one of the deputies. You will note the unsealed indictment that is included in the written testimony.

I would like to emphasize that Brooks County law enforcement has a very close working relationship with State and Federal law enforcement partners. I have worked alongside the ICE office, back then the Customs office, and started working with them in 1992. I also have a close working relationship with local U.S. Border Patrol under the direction of Kevin Oaks and Deputy Director Raul Ortiz and Agent in Charge in Brooks County Amidon Doyle. Without their support I cannot imagine how we would have fared. This past Friday we had a homicide in the city of Falfurrias, gang-related. Border Patrol provided assistance, and secured the perimeter to where we did not have any interference to secure the crime scene. They allowed the Texas Rangers and the local police department to handle the case.

I would also like to recognize those who have come to Brooks County's aid and to the aid of the family members of the 443 deceased victims found in the county. This assistance is provided without any type of cost to Brooks County. Dr. Kate Bradley, from Texas State University in San Marcos; Dr. Lori Baker, from Baylor University in Waco, Texas; Dr. Krista Latham, from Indianapolis University; and Dr. Harrell Gill-King, from the University of North Texas—all have gotten together and helped in identifying the victims so their families could be notified and have closure.

I would also like to recognize the Texas Lieutenant Governor's office that stepped up the last 2 years when no one else would and directed \$150,000 to the county to help our depleted budget.

In closing, while we are faced with many difficult security challenges, we also have to remind ourselves that South Texas is the



epicenter of legitimate trade and travel for the country. Therefore, it is incumbent upon local, State, and Federal law enforcement agencies to ensure our communities remain safe, and with the help of this Committee, I am confident the safety, economic vitality, and prosperity of our region will continue to prevail.

Again, Mr. Chairman, Ranking Member, and Committee Members, thank you for the opportunity to share Brooks County's challenges and those of the Nation's concerning the dangerous affliction of transnational crime. I would be pleased to answer any questions that you may have.

Chairman JOHNSON. Well, thank you, Chief Deputy Martinez.

Our next witness is Bryan Costigan. He is currently assigned as the Supervisory Agent in Charge of the Montana All-Threat Intelligence Center (MATIC) of the Department of Justice (DOJ), Division of Criminal Investigation. Prior to this position, Agent Costigan worked as an investigator in the General Investigation Bureau, specializing in financial crimes and criminal extremist groups. Agent Costigan has additional law enforcement experience with the Helena Police Department and the Lewis and Clark Sheriff's office. Mr. Costigan.

**TESTIMONY OF BRYAN COSTIGAN,<sup>1</sup> DIRECTOR, MONTANA ALL-THREAT INTELLIGENCE CENTER, DIVISION ON CRIMINAL INVESTIGATION, MONTANA DEPARTMENT OF JUSTICE**

Mr. COSTIGAN. Chairman Johnson, Ranking Member Carper, thank you for inviting me to testify today.

When most Americans think about border security, they think about the Southern border, and there is a lot of activity going on down there. For example, the Texas State Fusion Center fielded more than 53,000 requests for information in 2013 from law enforcement agencies, including 8,500 requests from Federal agencies alone.

At the same time, there are a lot of us who have our eyes focused on the Northern border. As Director of the Montana All-Threat Intelligence Center, one of the 78 fusion centers in the National Network of Fusion Centers, I can tell you that there has been a steady improvement in collaboration and information sharing across Federal, State, local, and tribal partners along the Northern border.

We all recognize that we cannot secure the border with people or physical infrastructure alone. We need a risk-based approach to understand threats, understand the actors and their methods of operating. We need to exchange that information quickly with our relevant partners. A combination of technology, relationships, and policies make that happen, and that is where fusion centers come into play.

I would like to give you examples of coordination that is occurring through fusion centers along the Northern border.

In Montana, DHS recently shared information with my fusion center regarding an organization smuggling narcotics from Mexico up along the Rocky Mountains and into Canada through Montana border crossings. Working with the Rocky Mountain HIDTA and the Risk Program, we performed an analysis to understand pat-

<sup>1</sup> The prepared statement of Mr. Costigan appears in the Appendix on page 539.

terns and worked with our State and local partners to enhance their ability to identify behaviors and share that information.

Our fusion center is a focal point for information sharing among the many agencies that operate in Montana. The Department of Homeland Security Immigration and Nationality Act (INA) is represented in our center, along with State and local agencies. We share information with the Border Patrol and CBP, with Canadian agencies through our Federal partners. Our fusion center has completed joint products with DHS INA and FBI regarding homeland security threats, and we recently participated in a multiple-State analytical effort regarding fraudulent driver's licenses, which have obvious implications for border security.

Elsewhere along the Northern border, the Ohio State Fusion Center is the hub for information and intelligence coordination in the Ohio Northern Border Initiative Task Force. The task force operates in partnership with the U.S. Border Patrol as part of Operation Stonegarden. Its mission is to provide law enforcement support through collaborative border security efforts in Northern Ohio. The task force works regularly with the Northeastern Ohio Regional Fusion Center in Cleveland and with the New York State Fusion Center regarding foreign-flagged vessels that have traveled through New York en route to Ohio waters. Task force leaders attend monthly regular briefings in Columbus at the Ohio State fusion center. The Maine fusion center has a CBP officer assigned full-time in its space and is engaged with Federal partners on both land and maritime border issues.

In South Dakota, a law enforcement officer encountered two foreign nationals at a traffic stop who were in possession of a credit card reader and over 100 stored-value cards. Criminal organizations are known to steal credit card numbers and then transfer funds to stored-value cards. The officer reported the encounter to the South Dakota fusion center. State and Federal records checks in coordination with the North Dakota fusion center and ICE investigators showed that the individual had ties to an active ICE money-laundering investigation. The fusion center also discovered that the subject had ties to associates in three other States. Through this collaboration, South Dakota and North Dakota fusion centers were able to provide new information to ICE to further their investigation.

Recently, police in Windsor, Canada, notified the Detroit Police Department that the Detroit-Windsor tunnel would be shut down due to an explosive device found in a vehicle. Analysts at the Detroit Urban Area Fusion Center conducted analysis regarding the vehicle and the suspects and provided information to the Border Patrol, DHS, Detroit police, and then the suspects were arrested.

Earlier this year, CBP received information regarding a port runner into Canada. Information was provided to the Detroit fusion center whose analysts reported key information back to the Federal partners to assist it in locating the suspect, who was later apprehended in Windsor.

In New York, the State Police and the U.S. Border Patrol developed information on individuals who were smuggling illegal aliens across the border in the northwestern part of the State. The New York State fusion center rapidly provided analysis and technical ca-

pabilities to help locate the individuals, including the use of automated license plate recognition (LPR), services. Further investigation by Federal partners and the Canadian authorities determined that the individuals were part of a larger human-smuggling network.

These are just a few of the examples of how fusion centers are providing local and regional context to homeland security threats, providing intelligence to support the Federal partners along the Northern border. Just as DHS components address many of the distinct security missions, fusion centers do the same by coordinating State and local resources across a spectrum of threats. So whether we are providing analytical support to Secret Service or HSI to further fraudulent resident alien card investigations or identifying domestic associates of transnational criminal actors, fusion centers today are supporting a wide range of homeland security missions.

Border security is one of those Federal missions where fusion centers are being used to coordinate State and local resources and analysis to enhance what is inherently a Federal responsibility.

Mr. Chairman and Senator Carper, thank you for inviting me today. My colleagues across the National Network of Fusion Centers are happy to provide more information as you consider how to strengthen the security of our borders. I look forward to your questions.

Chairman JOHNSON. Thank you, Mr. Costigan.

I will start my questioning with General McCaffrey. I just want to understand a little bit more, can you clarify your opening comment where you said conditions have improved. Now, I am assuming you are talking about the fact that we have certainly closed down some of these corridors and we have built fences, and certainly places in California and some of these areas are certainly far more secure. But it is kind of like damming up a flood; water just kind of flows around.

General MCCAFFREY. Exactly. Yes, at the end of the day, if you do not have a comprehensive defense—that acts in cooperation with foreign countries, I might add—it is hard to imagine how you ever get there. But it is still a great contribution. I mean, San Diego makes a perfect example. San Diego-Tijuana, before the barrier fencing went up, was a nightmare. The year before that fence went up—and these numbers are approximately right—there were 70-some-odd murders, many of them in broad daylight. I asserted at the time 100 percent of the women trying to cross that frontier were sexually assaulted. You could not use the beaches on either side of the frontier. Thousands of people would run down the interstate in broad daylight getting hit by cars. That sort of chaos has ended, and a lot of it is because of resources, technology, competence, and strategy of CBP.

Having said that, it seems shameful to me that I would be able to tell you that there are places in Arizona and Texas, as well as New Mexico, for that matter, where our border is not under our control, where there is a four-strand barbed wire fence, where there is no law enforcement presence on the frontier.

We have to get a coherent, long-term approach to border frontier. And, by the way, it is not impossible to do this. I frequently run

into the response that says, "No, come on. It is an illusion that you could actually stop traffic across a 2,000-mile border." You cannot stop it, but you can create conditions of law and order throughout the frontier region if we give people the tools and the right supervision.

Chairman JOHNSON. Again, so we have improved conditions in some areas, some sectors, some cities, but we certainly have not solved the problem.

You obviously were in charge of our drug problem here. In your testimony, you state that somewhere between 5 and 10 percent is the level of drug interdiction, which means 90 to 95 percent of illegal drug trafficking is succeeding; it is getting through.

We spend, I have seen in some briefings, about \$25 billion per year on our war on drugs. Can you just speak to the extent of that problem and where we are on that? It seems like we are a long way from solving that, from actually winning the war on drugs.

General McCaffrey. Well, Senator, I have always been a little bit reluctant to use the term "war on drugs." I tell people, "You want a war on drugs? Sit down at your own kitchen table and talk to your own children." That is really where it starts.

But to put it in context, when you look at America, 315 million of us, overwhelmingly we do not use illegal drugs, and the rate dropped dramatically from 1979, the peak rate of around 13 percent, past month's drug use, and got down to 6 or 7 percent. We were doing pretty darn good. Adolescent drug use rates dropped dramatically year after year; 13 years in a row they came down. Five years in a row, they have gone up. And the problem is not Mexican cartels driving it up. It is medical marijuana. It is a conversation that is lacking in the United States about the absolute disaster of chronic addiction. I spend a lot of my time working in that field still.

So I would argue that we—in accordance with international law and with our neighbors—we need to cooperate in drug interdiction. And, by the way, without it, it would be a damn disaster. If we were not in Colombia—we were in Peru and Ecuador, less so, almost non-existent now. You have to go out there and help people on the ground with their condition. Senator Carper talked about El Salvador, Honduras, and Guatemala. Just complete nightmares now of law enforcement.

It is not just drugs, by the way. The Canadians have drugs up north, but they are not slaughtering each other with AK-47s. These are institutional, lacking capacity in Central America, and broken cultures.

Chairman JOHNSON. Let me understand. So you are saying that we were making progress in terms of reducing the demand in America for drugs. Do you believe the number of drugs coming into this country has been reduced over the last 20 years? What would be the total stats on that? Is it going down?

General McCaffrey. Well, when we do well at reducing transit of heroin across the frontier, drug use turned to synthetic opioids. So for several years in a row, oxycontin, Percocet, and diverted legal narcotics were the problem. Fortunately, Congress, the State of Florida, and other places, cracked down on that. So I tell people it is not the kind of drug we are seeing. It is drugged behavior,

which brings criminality, ill health, destruction of families. Part of it ought to be stopping the flow of drugs across the frontier, going to source production of drugs, and support those governments to deal with it.

But that is not the way to defeat the problem of drug addiction, I would not think.

Chairman JOHNSON. My time is running short. I will get to the other witnesses in my second round of questioning. But while I have General McCaffrey, I am highly concerned about the nexus between drug cartels and international terrorism and a growing connection with money laundering. I have been briefed on a number of things just in terms of the sale of used cars and the use of that in terms of money laundering.

Can you just speak to what you have seen in terms of the progression of that nexus between potential Islamic terror, international terrorists, and the drug cartels?

General MCCAFFREY. Well, thank God for the NSA, the CIA, and U.S. Special Operations Command, without which we would have—a disaster would have occurred over the last 10, 12 years in this country. They are doing an incredible job in the international community.

The back-up in the United States is increasingly sophisticated. The FBI and other Federal law enforcement, CBP in particular, are extremely good and have—the deterrence factor of Federal law enforcement is enormous. People say, the terrorists say, if we are going to attack someplace, let us go to Paris, Madrid, Indonesia, as opposed to trying to get to New York City. So we have done tremendous work in that area also.

Having said that, if we have half a million people that walk across the frontier from Mexico every year, which is the case—a quarter of them actually come out of Central America. We are picking up Pakistani nationals, Iraqis, jihadists out of Crimea. All sorts of goofy people are showing up on that frontier. So far not an organized terrorist operation. It will happen. We have several thousands foreign fighters with ISIS right now, primarily Europeans, a handful from America. We are going to see them come home, and the obvious way to get into the country is across the frontier, not through trying to talk down a CBP officer at Dulles airport.

Chairman JOHNSON. Thank you, General. Senator Carper.

Senator CARPER. Thanks very much, Mr. Chairman. Again, thank you all for just timely testimony.

We have all heard and probably all used the phrase “like finding a needle in a haystack.” Not an easy thing to do. But if we are looking for a needle in a haystack, sometimes it is helpful if we actually reduce the size of the haystack. And the other thing that might be helpful is to find technology or tools that enable us to find needles, small ones.

One of the things that we have focused on a fair amount in this Committee the last couple years and this year as well—is figuring out how do we reduce the size of the haystack. And one of the ways that we are trying to do that is to reduce the flow of illegal immigrants from countries like Honduras, Guatemala, and El Salvador. They comprise today actually more people coming in from those countries than from Mexico. And the reason why they come from

those countries is they live lives of misery, which we actually impart to them by virtue of our addiction to the substances we have talked about here today.

There are some things that we observed when Senator Johnson and Senator Sasse and I were down on the border of Mexico a month or so ago. We talked a lot with folks there about force multipliers, and that is, how do we do a better job of finding those needles, figuratively speaking. Well, we use drones. And the IG from the Department of Homeland Security would suggest we do not use them very effectively, and we are drilling down on that to try to make sure we do a much better job and get our money's worth.

We saw and heard about tethered aerostats, dirigibles that go up to 1,000, 5,000, even 10,000 feet. They cannot always operate the drones when the weather is not good, when the winds are up. Same thing with tethered aerostats.

We heard some good things about stationary towers. Actually, we heard some good things about mobile towers. It is not always easy to get somebody to let them be sited on their property, but actually we heard some encouraging reports there.

We saw a little bit about helicopters that we are using, some discussion about fixed-wing aircraft. We actually flew around in a B-3 aircraft, which is what I flew around in when I was in the Navy for a number of years. And we are using them, reconfiguring them with different surveillance equipment to be able to pick up drug runners coming in from across the waters.

We have an aircraft down there that is called the Cessna 206, which I think in the past we have used, we send people out with binoculars to look for folks trying to get into the country—not a smart thing to do. We put our drones without using evader systems that are highly effective in picking up incoming.

We found out that in about 150, 200 miles of waterway from the Gulf of Mexico inland on the Rio Grande River, we have just a couple of places where you could actually put boats in, and in a lot of places we could use lighter boats, boats that do not go very far down into the water and could go a lot faster.

We heard about night vision goggles. We actually heard about horses, had a chance to see how they are starting to use horses down there, and in the high brush they are actually pretty effective, getting the riders up above the brush. In fact, the horses are actually effective in sensing people coming through.

And we heard a fair amount about just access to public lands, trying to make sure we are doing a better job and not just providing those like a free rein for the bad guys to get through.

Those are just some of the force multipliers that we talked about and heard about.

Let me just ask anybody on the Committee, have you all thought about this? What are some of the most effective force multipliers, realizing there is not one silver bullet for any particular point of our border, but through a lot of different combinations that we can—in some places fences work, in some places they do not. Sometimes dirigibles work or drones work, or sometimes they do not.

Mr. Costigan, do you want to give us some thoughts from the north, up north, what can we learn from you guys, particularly working with the Canadian Government in terms of force multi-

pliers? Maybe the other best force multiplier is intelligence—information sharing, intelligence sharing. We have a lot of cooperation with Colombia maybe not so much with Mexico and some of these other countries. Go ahead, just very briefly.

Mr. COSTIGAN. Mr. Chairman, Senator Carper, information sharing is very important. We work closely with our Northern border partners all the way across the way to figure out the threats that are going on and work joint investigations with them. It always helps. I know Border Patrol has embraced technology along the Northern border to include drones and all sorts of other tools that I have heard about from them directly.

Senator CARPER. All right. Thank you.

Mr. Martinez, please, force multipliers.

Mr. MARTINEZ. Yes, sir. Brooks County has two aerostats, and those are excellent if the weather is permissible. But we—

Senator CARPER. How high do you go up?

Mr. MARTINEZ. I believe they go up to between 5,000 and 10,000.

Senator CARPER. OK.

Mr. MARTINEZ. It depends on the weather. Right now our weather, the wind has not picked up yet, so they are good. But we have had bad weather. But when they are up, they are very productive, and we are able to get the trend. There is always a trend movement within the brush. We are able to locate the trend and send the interceptors to intercept the group. So that is always good.

And there is always backpacking. You always find your backpackers, those that carry their 50-pound backpack with narcotics.

We also need something besides the aerostat because once the aerostat is down there is no visual. Our brush is thick and it makes good cover. Vegetation is solid for the smuggler.

Senator CARPER. OK. Thanks so much. Ms. Kempshall.

Ms. KEMPSHALL. Thank you, Senator. I have been involved in drug law enforcement for 31 years now, and I have seen all different phases of it, where it was stovepiped and law enforcement was not cooperating with one another to the point where they are now, and we are really cooperating like never before, because if we do not, we understand the consequences.

And I think using intelligence to drive multiagency task forces is the best force multiplier we can have.

Senator CARPER. OK. Good. Thanks so much. Mr. Torres.

Mr. TORRES. Several areas for really making a difference here. Technology made a significant difference over the course of my career, as well as international cooperation, being able to push the borders out and use vetted units in host countries. Community cooperation with the various groups that are out there, and then really building efficiencies into the processes we had at the Federal Government so we could do more with less.

Senator CARPER. Good. Thanks.

My time is about to expire. General McCaffrey, just take a minute. You have had a fair amount of preparation, talked to a bunch of folks before you gave your testimony. What advice would you have for us on force—

General MCCAFFREY. One of my favorite stories, Senator Carper, is just before I left the drug czar's position, I had a big conference in El Paso, and I was very proud of myself because we deployed

a lot of technology to the frontier during those 5½ years. We made two giant busts. For 3 days we were having a conference right at the El Paso port of entry, and I got out there and told the press it was a payoff obviously of my investment in technology, et cetera, et cetera.

The truth of the matter is one of the biggest busts, 10, 12 metric tons of pot built into an industrial strength compartment on a truck. The truck pulls up to this tired old customs officer who has been breathing fumes for the last 15 years. He hands over his papers—by the way, the consequence of losing drugs, you get murdered. He hands over his papers to the customs guy, and his hand is shaking. And the customs officer goes, “You carrying drugs today?” And he says, “Not much.” And that was the secret to the bust.

So I never wanted to lose sight that in law enforcement, less so in Marine and U.S. Attorney Ranger operations, an experienced old-hand law enforcement professional is key. So building that Customs and Border Protection and getting them out there where they have NCO quality leadership is going to be essential to us. But the technologies are crucial?

The aerostats are magic if they are up. And these cartels, they are an intelligent enemy, so they are watching—sequestration came into effect, and they piled across that border like you could not believe. They knew the aircraft were down. They called audibles and moved across the frontier. So technology is good, but we need experienced professional law enforcement.

Senator CARPER. Good. Thank you all. Thank you.

Chairman JOHNSON. Senator Tester.

#### **OPENING STATEMENT OF SENATOR TESTER**

Senator TESTER. Yes, thank you, Mr. Chairman, and I want to thank the Ranking Member also for your opening statements and for holding this hearing. And I want to thank you all for being here and for the job you do. It is not easy. We talk about having technology on our side. We need to also remember, as you just said, they have technology on their side, too.

I had an incredible opportunity last Saturday to get a briefing by the Border Patrol on what is going on on the Northern border. It was a marvelous briefing, but it was also very stunning to see what is going on up there, and I think we talked about one of the things you just talked about as far as smuggling things across the border, Elizabeth.

If it was all like this, oh, my God, how easy it would be. When I look at a picture like this, I wonder what is going on down the road 5 miles up the border. I mean, the truth is that I am just a dirt farmer from north-central Montana, but if there is pot in those bags, I would be surprised, quite frankly. It is amazing to me that we do the job we can do on the border.

And I just want to ask a question, because I think the Northern and the Southern border are absolutely connected. I think you guys talked about it a little bit, about some of the stuff that is going on on the Southern border has a direct nexus with what is going on on the Northern border and vice versa.



So the question I have—and you are right, Canada is a good friend. But without the help of our allies, of the Mexican Government in particular, and other governments around the country, is it possible to secure our border? That is for you, General McCaffrey.

General MCCAFFREY. Well, I think as a general statement, we are inadequately focused on the north-south axis. At the height of the—and these are not arguments against the war on terror—but at the height of the Iraq campaign, we were spending \$12 billion a month. At the height of the Afghanistan campaign, it was \$10 billion a month, 60,000 killed and wounded. We went all out and should have done so.

Now, you turn around and look at the resources. Here, after years and years of supporting it, I think the number now is something on the order of six Black Hawk helicopters have gone south.

It is shameful, the inadequate resources we have in some ways provided these countries. And our agents in many cases, we have tied their hands. If you want to deal with the government of Honduras, Guatemala, and El Salvador, you are dealing with imperiled regimes. So it is not appropriate to tie their hands and say you cannot talk to certain kinds of units because they had human rights violations in the past. You have to get inside them and try and change them.

I do not think we have done enough on the north-south axis at all. General Kelly you mentioned, probably the finest four-star we have on active duty today. This guy is really first-rate. He has been trying to call attention to that north-south axis and the impact of international crime, driven in many cases by drugs.

Senator TESTER. And the point is that without their help, without making those relationships, it is going to be very difficult to stop it.

General MCCAFFREY. Sure.

Senator TESTER. The other point that you brought up, General McCaffrey—and I very much appreciate it—is that you said without sensible immigration policy it is going to be an uphill battle. I paraphrased what you said. Can you talk about that just for a second? You touched on it. You touched on the fact that it is not all Hispanics, that the fact is there are some folks that are here—and quite a number of them, quite frankly, that are here because we want them here, whether they are running our dairies or running our motels or are engineers in our businesses. Can you talk about the importance for sensible immigration to allow you guys, you five and the folks you represent, to be able to do your job?

General MCCAFFREY. Well, it has become such a partisan—

Senator TESTER. That is correct.

General MCCAFFREY [continuing]. Source of fury, it is just astonishing to me. And, again, that is why I try and say it is two sides of the same coin. As the Chairman has pointed out, you can pass bill after bill, but if your illegal immigration goes from 2 million to 11 million, apparently you are not doing the right thing.

Senator TESTER. That is right.

General MCCAFFREY. And, I look at the Yakima River Valley, the fruit basket of America, which is almost across the board illegal migrant labor, without OSHA safety standards, minimum wage, they

cannot wire money home to their mother. When they cross the frontier going home at Christmas, they get shaken down by the Mexican border police.

Senator TESTER. Right.

General MCCAFFREY. It is just an unconscionable situation.

And, by the way, that is only half the problem. Half these people that are here illegally, the Indian high-tech people got off a plane and stayed. But the notion that we could deport or in some ways penalize the existing population of the country when we need their labor, among other things, does not make any sense. Nobody really believes we can do that.

Senator TESTER. OK. John Torres, a question for you. About a year ago, maybe it was 9 months ago, we were talking about 60,000 people at the border that were under the age of 18. I assume that is not occurring, at least to that level, at this point in time. What transpired to have that stop?

Mr. TORRES. Well, to Secretary Johnson's credit, he reached out to a number of different people to get a lot of different opinions as to what steps could be taken, and included in some of those steps that they have done is they have focused a little bit more precision-wise with enforcement, to target the human-smuggling networks that were breaking people up.

Senator TESTER. That was happening in countries like Guatemala and El Salvador and places like that?

Mr. TORRES. Yes, right. And enhance the international cooperation with our foreign law enforcement counterparts so that they could work together. And then he reached out to the local communities to work with NGO's, to work with faith-based organizations, and to work with the medical community, to drive resources down there so that they could really address the hypersensitivity of that market there.

Senator TESTER. Right. Well, like I said, I very much appreciate the work you guys are doing to find solutions to problems, and sometimes we tie your hands here in Congress. And I think that is very unfortunate moving forward.

The last question is for you, Bryan. The Bakken has incredible growth and a lot of money, and we are seeing what I think are drug cartels moving into that area and have been for some time now. Could you talk about that and talk about the threat and, since it is right on Montana-North Dakota's border, what you are trying to do to bring everybody together to solve the problem?

Mr. COSTIGAN. Sure. Senator, what we are seeing is—the Bakken, obviously, huge energy growth between Saskatchewan, North Dakota, and eastern Montana. And what we are having happen there is traditionally in Montana our folks that ran our drug trade in Montana used to trip to go out to get their drug supplies from other States, go to Arizona, go to Denver, or wherever, and pick up their stuff.

We have seen a change now where we are starting to see cartel activity move up into the Bakken, and it is obvious the corporate mentality and culture is coming in because there is money there, huge disposable incomes that are there, and these folks are starting to move in. So we are seeing big changes there.

Some of the issues that we are having with that and we are trying to address is obviously it is multiple States. We have North Dakota and Montana there, and we are working together back and forth. The FBI has moved a new field office in there. We have seen some interesting things go on, task forces come about, and working forward. The North Dakota fusion center and we cooperate on a daily basis back and forth, sharing information regarding those threats.

Senator TESTER. Thank you very much. Thank you all for what you do.

Chairman JOHNSON. Thank you, Senator Tester. I will point out, on Thursday, we are going to have a hearing that is going to really lay out the population of people in this country illegally, and what they are doing. I agree, if we had a functioning guest worker program, you would certainly minimize the people coming here illegally, make that a legal process. We had that in the 1960s with the bracero program but with all its problems that got canceled. But we did not have the significant illegal immigration problem when we have today. People could come and go. We need to understand what works and what has not worked. But I hope you can attend Thursday's hearing. Hopefully that will be enlightening in terms of that reality as well.

Senator TESTER. Yes, Mr. Chairman, if I might, I think you are exactly correct, but I do not think we can expect these folks to do their job if we do not do ours.

Chairman JOHNSON. I understand.

Senator TESTER. And part of it is getting a sensible immigration policy passed around here and taking the politics out of it, as General McCaffrey said, because it is too important. It is not going to go away unless we deal with it.

Chairman JOHNSON. And the way I am trying to take the politics out is we share these same goals and lay out the reality. That is the start, the first step. Thank you. Senator Peters.

#### **OPENING STATEMENT OF SENATOR PETERS**

Senator PETERS. Thank you, Mr. Chairman, and thank you for putting together this hearing, and Ranking Member Carper as well. And to our panelists, it has been a very interesting discussion, and I appreciate the work that you do each and every day to secure our border. From listening to Senator Tester, we know it is a very complex issue as well. It requires more than just securing the border. It means also reaching out to other countries as well and looking at in a comprehensive way. And I know all of you are thinking about that on a regular basis, and I appreciate that and hope you continue to bring your ideas to us here in Congress.

Also, Mr. Chairman, I appreciate the perspective from the Northern border, and I hope that as we continue to have hearings, given that I represent Michigan, we discuss some of the unique challenges in States not only like Michigan but North Dakota and New Hampshire and Montana and other Northern border States that should be part of any discussion when we talk about securing our country.

As Mr. Costigan pointed out in his testimony, often the Northern border receives less attention and resources than the Southern bor-

der. And in order to deal with the vast expanse of land that you have in Montana, which spans over 500 miles and two Border Patrol sectors as well as the network of Northern border States including Michigan, the fusion centers were created to share intelligence among law enforcement agencies. And, Mr. Costigan, I appreciate your discussion of those fusion centers and how they work and how they have been effective in dealing with the complexity of a very wide open border.

But as all of you know, transnational criminal organizations will always try to seek the path of least resistance, and in Michigan, unique geography presents a challenge to border security and law enforcement. The Detroit River serves as an international boundary between the United States and Canada, but at points it is only a mile wide.

During Prohibition, rum runners regularly used the narrow river to smuggle alcohol. Just recently, we had a Canadian man who was arrested while swimming across the river and back to fulfill a bet after a night of drinking. Last fall, we had two Americans that were arrested, and their boat was seized when they were caught smuggling tobacco into the United States as well. And there are many other instances just like this.

But the United States certainly has worked with our Canadian partners through the Beyond the Border Action Plan to address threats early with the goal of preventing dangerous people or materials from reaching either country and facilitating cross-border enforcement.

In Michigan, on the Detroit River, criminals have been using the border against law enforcement by retreating to the opposite side of the border when they are pursued exclusively by either the United States or Canadian law enforcement. However, a collaboration between the United States Coast Guard and Royal Canadian Mounted Police known as “Shiprider” has served as a very innovative way to make our border more secure. The program allows for cross-designation of specially trained officers who are allowed to conduct law enforcement on either side of the border while patrolling shared waterways. Shiprider is a success story for cross-border law enforcement cooperation by preventing these criminals from simply crossing into Canadian waters in order to avoid a U.S. Coast Guard vessel that is pursuing them.

So given that kind of cooperation with the Canadians—Mr. Costigan, you mentioned in your testimony as well, and you have been at this a number of years—what have you seen in terms of cooperation between the United States and Canada? It sounds as if it is getting stronger? Are there areas where you think we need to improve that? If you could give us kind of an assessment of where that international cooperation is currently on the Northern border.

Mr. COSTIGAN. Mr. Chairman, Senator, I believe that it is improving, and through the Border Enforcement Teams or the old IBETs, as they used to call them in some of the border areas, that works great for sharing information. But I think at times we need to figure out a better way to share information with our Canadian partners in a more timely manner.

Obviously, as an ally of ours, we want to share as much as possible, but sometimes information restrictions that are placed upon State and locals in sharing information with the Canadians, since they are another country, proves difficult at times. We get the information to them if they absolutely need it immediately, but sometimes there are these impediments in the road.

Senator PETERS. So that is a function of communications, just the barriers in communications? Would you elaborate on that, please?

Mr. COSTIGAN. Senator, I think part of it has to do with when we can release information and what we cannot. If I have a product that is produced by the FBI or DHS or something along that line, I cannot release that without the agency's permission. Sometimes that permission takes a long time to get back down to us to release that to our partners.

Senator PETERS. OK. Good.

To the other panelists, let me just go down the panel, in your assessment—we have talked about the linkage between the Southern border and Northern border. Perhaps just briefly, if you could mention, do you believe that Federal resources and initiatives are sufficient for work on the Northern border? And if not, is there one area in particular in relation to the Northern border that may be different than the Southern border that we need to consider? We will start down there with Mr. Martinez, and we will work our way down to General McCaffrey.

Mr. MARTINEZ. Yes, Senator, I believe that the communications, of course, is always vital, but it all depends on what restricts that particular information to be filtered out. In our case, not having any direct contact in Mexico as to who to contact in that particular country, I would not filter anything out to them. Those are just my thoughts.

Senator PETERS. OK.

Ms. KEMPSHALL. Senator, I do believe that communication with our partner countries is critically important. I have seen times during my time as a special agent with the Drug Enforcement Administration that we could not share information freely with Mexico. And I saw how that hindered our investigations. You knew if you had a connection in Mexico at that time it just stopped, and the investigation could go no further. And I saw under President Calderon's administration we enhanced that communication, and we made real strides, and we made impact on a number of the cartels.

We know that the Mexican drug-trafficking organizations are supplying Canada with drugs, because they can get more money for their kilos of cocaine in Canada right now than they can in the United States. So I think it is imperative that we have that communication capability from Mexico to the United States and to Canada, because if we are not able to communicate, then these drug organizations succeed because we are not able to break their infrastructure.

So I think it is critically important, but sharing intelligence in Mexico has its unique challenges because you have to know who to share it with, as Mr. Martinez said, and how to share it, because if you have someone that you can cooperate with, you do not want to put them in harm's way in Mexico because you are cooperating

with them because of the corruption and the challenges that we have. So communication is important, and we have to develop those lines of communication to effectively address the challenges that we have.

Mr. TORRES. Senator, I believe you said it best when you said that these organizations take the path of least resistance. As we put more pressure in other areas with various different programs with regards to national security, drugs, gangs, money laundering, some of these organizations will take a look at Canada and see that it is easier to get to Canada, and from there they can make their way to the United States.

One of the issues we dealt with quite frequently over the years was asylum issues. Many people from other countries thought it may be easier to get asylum in Canada and then take advantage of the border, the Northern border, to come down to the United States as opposed to just trying to come to the United States to get asylum. And so as we strengthen our programs, if they are not commensurate across the board or with our neighboring countries, they will take advantage of that.

Senator PETERS. Thank you.

And, General, thank you.

General MCCAFFREY. Senator, a couple of thoughts. One is, if you are a Canadian RMP official and you look at the drug threat to Canada, it is us. It is Interstate 5. We are the transit country for 99 percent of the cocaine coming out of the production areas going into that country. So it is an odd thing. I used to think of that every year, and we had to validate who was cooperating with us in foreign governments and thinking the Canadians ought to disenfranchise us, not the other way around.

I think the second thing that is unusual dealing with Canada is the economic importance of cross-border trade is so gigantic that we should never lose sight of that. The investment in infrastructure on the Northern border has been inadequate to make sure we could facilitate that cross-border trade. That river, that bridge situation in Detroit is just crazy that we have not solved that already.

So, the biggest foreign trading partner of the United States is Canada. Normally No. 2 or No. 3 is Mexico. We are all wrapped in a NAFTA basket. But the economic implications of the Northern border are vital.

Canadian immigration policy has always been a sensitive issue. Who they let into their country means they automatically let them into our country, because essentially we still do not have the border even remotely under control for individuals. So we have to have better discussions with them along that line.

Then a final note: When it comes to law enforcement sharing information, it is a very unusual situation. The Canadians have 100 percent integration with the U.S. Department of Defense. They actually are in command of U.S. and Canadian forces in NORAD, as you know. They are routinely—New Zealand, Australia, Canada, and Great Britain—get all of our sensitive intel. So why we have problems sharing information is a structural failing on our part because it does not exist in the Department of Defense.

Chairman JOHNSON. Senator Booker.

### OPENING STATEMENT OF SENATOR BOOKER

Senator BOOKER. Thank you. My family are not immigrants to the United States in any recent generations, but I was raised to be very sensitive of our American values, which are you are a citizen of the United States, whether you are a first-generation immigrant from Mexico or Canada, you enjoy certain rights and privileges to be an American citizen. And some of our most vaunted values are values of inclusion and tolerance. And I live in this country that I love and adore, but the racial realities are evident. If you are an African American, you are multiple times more likely to be stopped for suspicion of using drugs than if you are not an African American. If you are a Latino American, you are multiple times more likely to be stopped for suspicion of possession of drugs than if you are not a Latino American. And this has resulted in wild biases within our criminal justice system where there is no difference between blacks and whites for using drugs, but astonishingly, blacks will be arrested about 3.7 times more likely.

And so when I see this bias, it actually to me stretches to a lot of our focus or concern, and I am curious from some of the panelists that every time I hear "secure the border," people seem to be talking about our Southern border. I come in and I see a picture of Latinos crossing the river, and I wonder: Where is the picture of the Canadian border and the thousands and thousands of illegal crossing we have there?

Why does it seem that we have a Nation so much more concerned about the serious problem that does indeed exist on our Southern border but very scant, little conversation about our Northern border? And I am wondering if that stems from some of the fears that we have that drive us as a Nation to so disproportionately impact blacks and Latinos in the criminal justice system for legal citizens. I am wondering that we celebrate in a perverse way our Southern border crossings and all those problems when the data shows that we have a serious problem in the north as well.

We have right now in reality unique security challenges and significant threats along the longest border in the entire globe, over 5,000 miles, in the north, and this is diverse terrains and climates. Roughly 300,000 people a day, \$1.5 billion in trade, are crossing our Northern border every day. We have a problem. A June 2012 report from the Department of Homeland Security entitled "Northern Border Strategy" highlighted the fact that illicit drugs are the predominant form of contraband smuggled across our Northern border, but no pictures. Not talked about in the press. Somehow that is scary to us, but our national imagination does not seem to be focused on a problem that is on our north as well.

The Northern border is also an avenue for unintended hazards that do affect our country, including infectious and communicable diseases, and the potential for terrorism and violent extremism that can attempt to gain entry and access across that porous border in our north. And so I wonder: Where is the enthusiasm, the seeming alacrity that I find about our Southern border to secure our north?

And so, Mr. Costigan, I am so happy you are here. As Director of Montana's All-Threat Intelligence Center, you are a leader in

protecting the security of our Northern border communities. I am grateful. I wish you brought a photo, too, because we have a real problem. It may not be scary brown people, but we have a problem. Is that correct, sir? Yes or no.

Mr. COSTIGAN. I would agree.

Senator BOOKER. Serious problem.

Mr. COSTIGAN. I do not know if I would term it as "serious," but there is a problem.

Senator BOOKER. And so what problems and what priorities should we be giving the security of our Northern border?

Mr. COSTIGAN. Senator, from my perspective, obviously I am a Northern border person, and I agree that we have a problem on the Northern border and that we have to dedicate resources to it.

Senator BOOKER. And just last week, a Border Patrol official fatally shot a man named Jamison E. Childress, if I am pronouncing that right, who was apparently in the country illegally on the U.S.-Canadian border about 100 miles north of Seattle, according to the New York Times. The man was wanted for murder outside Whatcom County—again, I hope I am pronouncing that right—Washington. The man was approached by two Border Patrol agents after setting off ground sensors along the border into the United States near the town of Sumas, Washington, after displaying erratic and threatening behavior toward the agents and refusing to follow their orders. The man sprayed one agent with an incapacitating spray. One of two agents shot and killed the man.

I am concerned right now that people are crossing our international border from Canada to bring crime and violence. The fact that you do not think it is serious—the levels of drugs that come across our Northern border, the level of illicit contraband, the level of counterfeit prescription drugs, the level of threats to our community to me strikes me as very serious.

And so do you share my concern that Congress should be a lot more vigilant and use our resources to protect the integrity and security of our Northern border? And if so, why don't you think there is more attention on our Northern border?

Mr. COSTIGAN. I agree that we should pay attention to the Northern border, and I would say that I am thankful for being here to be able to testify regarding that issue.

As far as what kind of resources we dedicate to it, I think that the Congress has to make that decision how we dedicate those resources and where they are going to put it.

Senator BOOKER. General, I appreciate your longstanding service to the United States of America and to this country. I am wondering if you could shed some more light on what I consider to be a serious threat. Illegal immigration on the U.S.-Mexico border is at a 40-year low. We have a lot of work to do. There are serious crimes going on on the border. There are border towns and communities that are facing horrific circumstances because of drugs and cartels. I have heard about it. I have read about it. I turn on the news, and I see it every day. But our Northern border has thousands and thousands of illegal immigrants every year crossing into this country of undocumented immigrants, and there is a tremendous drug problem on our Northern border as well.



Do you agree with me with the severity and the urgency to address this problem?

General MCCAFFREY. Let me go to the first point you made because it is the toughest one. Normally I have current numbers, the Monitoring the Future study, et cetera. As a general statement, when you hold up a mirror to America and say, "Who is using drugs here in this country?" as a general statement, some of the lowest rates of drug abuse in American society, first of all, are the armed forces. And, also, if you are talking young people, it is African Americans who have a lower rate to include cocaine use than does the general population. And yet the consequences are dramatically different, and for a variety of reasons. If you are a Honduran kid selling drugs on the streets of Los Angeles, we are going to arrest you the first night. You will not have bail. You will not have a dad who has a lawyer. There is a whole series of social, cultural, economic factors that come into play. It deserves a serious discussion to address that issue, without which I think it is a major factor bearing on the disproportionate focus of the criminal justice system on minority populations.

And, by the way, one of the highest rates of drug abuse in American society are health professionals. So if you are a plastic surgeon in San Francisco, a 40-year-old female, and you end up in one of our CRC health group treatment facilities, you are going to get 30 days of inpatient care. You are going to have 2 years of supervised care afterwards. You are going to respond because the DEA is holding your license to write prescriptions. But not so much if you are in Chicago. So I think that point you make is a complex one, but we need to look at it.

Now, when it comes to cross-border concerns, solving the problem of controlling the U.S.-Canadian border is a tough one. But I have always been uneasy about saying there is an equivalence between the problems in Mexico, the problems in the United States, and problems in Canada.

Senator BOOKER. And forgive me, General, for interrupting you. I make no equivalency. The sheer numbers—

General MCCAFFREY. No, I did not say you did. I am just saying I am always uneasy about that argument. If you are on the U.S.-Mexican frontier right now, a U.S. citizen or law enforcement, you will not walk across the frontier for any reason unless you have an IQ below 70. Tijuana, different, but as a general statement, those border communities now, there may be gun fights going on across the frontier for a week at a time, survivors stumbling across the frontier. It is a flipping nightmare over there. It is a good deal living next to Canada. I mean, it might be slightly better at the Vatican, but the Canadians are a law-based society, first-rate law enforcement, economically vital to U.S. national interests—as is Mexico, I might add. So I do not think there is an equivalency.

Now, how you go about securing 5,000 miles of border with Canada, you have to have a common immigration policy for starters. If you are a Chinese citizen with a master's degree in physics, your preferred port of entry is to go into Canada and then come across the frontier into the United States.

Senator BOOKER. And just if I can tread upon the Chairman's good graces, my last, final follow-up is: It was said earlier about

jihadists from Crimea. If you were a terrorist trying to cross over a border, what is easier crossing, the north or the south?

General McCaffrey. Well, you have to get into Canada for starters. So there is first-rate intelligence cooperation between Canadian and U.S. authorities. So I would be reluctant to fly into Canada also. Once you are in, clearly you can get into the United States much more easily from that direction.

But back to the U.S.-Mexican border, half a million people walk into this country every year illegally, so the border is not controlled. Even though it is safe in the major border cities, you can still cross the frontier, pay the nice man \$1,000, and he will drive you across the frontier.

Senator BOOKER. Right, and the point is that we just saw Canadian homegrown terrorists who caused some serious incidents. So someone from Canada who is already radicalized, it would be very easy for them to come across our border, correct?

General McCaffrey. Yes. Again, though, the insight—Canada's culture of civilization and peace is pretty intense compared to the United States. If I was a terrorist, I might move out of the United States into Canada where I would feel safer.

Chairman JOHNSON. Senator Booker, before you leave, because you were not here with the opening—and I just need to assure you there was no racial intent, absolutely no purpose behind this to bring race into this at all. This hearing is about laying out the reality. I am happy to hold a hearing on the problems with the Northern border. Right now we are talking about transnational crime. We had a picture<sup>1</sup> given to us by a sheriff from Mission, Texas, showing the impunity with which the drug cartels operate on the other side of the border. This was a turnback situation, and that is the only purpose of that, was to lay out that reality. If you have a good picture that illustrates a particular reality on the Northern border, happy to put it out here. But there was absolutely no racial intent of that particular picture. This was just showing the impunity of the drug cartels and how they operate on the Southern border. OK.

General McCaffrey, real quick, I know in our office you said you did not really particularly like talking about the total dollar value of the drug problem in the world. I know the U.N. reports it is about a \$320 billion per year business. Quite honestly, I was actually surprised it is that low. I thought it would be a bigger problem.

I will ask any of the witnesses here. Do we have any sense in terms of the dollar value of the human-trafficking component, the sex trafficking, and then the amount of money the drug cartels also make off of the illegal immigration? I separate human trafficking/sex trafficking from the illegal immigration smuggling as well. Anybody have any sense in terms of just the dollar value, the enormity of that?

General McCaffrey. Let me add a quick interjection. I tried to get law enforcement to stop briefing me on the dollar value of drugs seized. They have no value. It is all situational. If you are a dentist in Miami, you will spend 5,000 bucks a weekend on cocaine. If you are a poor boy in Rio, you can get a basyca, cocaine

<sup>1</sup> The picture submitted by Senator Johnson appears in the Appendix on page 552.

paste cigarette, for \$2. The supply of illegal drugs always grossly exceeds the demand. That is the key. And then when you get to the synthetic, manufactured drugs, there is, of course, an unending supply.

Chairman JOHNSON. You are saying the supply exceeds the demand?

General MCCAFFREY. Always, across the board.

Chairman JOHNSON. Because it is so lucrative. I mean, there is so much money to be made in it.

General MCCAFFREY. It is so easy to make them. There is no industrial—we are not talking Mercedes cars or growing fine wine. So the supply out there is unconstrained. And so it depends on who you are how much you will pay for the drugs. It is better to measure shattered lives, it is better to go to Monitoring the Future and talk about kids dropping out of school, better to go to the hospital emergency rooms, all of which we do, and see who is on what drug when they come in.

Chairman JOHNSON. I understand. So much of this, let us face it, it is driven by the profit motive, and there is enormous amounts of money to be made, and I am just trying to get my head around that.

Mr. Torres, this is almost totally aside, but you made a comment—I am new to public policy, just came to the Senate in 2011. But you said you were part of the bin Laden Unit. Is that what the name of the unit actually was back in 1997?

Mr. TORRES. Right. It was the Usama, with a “U,” Usama bin Laden Unit. It was created in early 1998, and I left that unit in 2000 to run the Denver office, but it continued for years.

Chairman JOHNSON. OK. Again, that just caught me by surprise. I was not aware of that, that we knew so much about Osama bin Laden that we actually had a unit set up within the FBI.

Ms. Kempshall, you talked about the scouting networks. What laws are in place—or are there no laws in place—that we can arrest those individuals that we basically know are scouts? I mean, is there any control that we can have? Because we were down on the border, and literally we were standing right next to a scout. I know we were. He was on his phone. He was communicating our position to members of his gang on the other side. What laws are in place?

Ms. KEMPSHALL. It is a scary feeling, isn't it, when you know someone is watching you and calling out your positions as a law enforcement official to the bad guys that you are trying to apprehend. It has been a challenge for us to prosecute the scouts because it was just nothing specific for them. And I think it is important that there are consequences to their bad actions, because if they are not facing significant jail time, then they are just going to continue to do it and be replaced, because it is an opportunity to get into the United States, a slap on the wrist, they go back, and then family members can come back and replace them.

So it is important that laws are created that these scouts will face significant—

Chairman JOHNSON. So currently we do not have laws.

Ms. KEMPSHALL. They are very difficult to prosecute.

Chairman JOHNSON. And, of course, if we did have laws, they would be using minors, which is another problem, correct?

Ms. KEMPSHALL. That is a significant problem, because we are seeing that across—the children are being used to bring drugs in across the ports, because in the Federal system it is very difficult to prosecute a minor. So now we have to have that prosecution handled by a county attorney in a border town that has very limited resources. But the law enforcement community feels like you cannot let these crimes go unpunished, or they are going to continue.

Chairman JOHNSON. That was a shock to me when I was down on the border, and I was talking to local law enforcement, and a couple things were revealed to me that were shocking.

First of all, I have always viewed this jurisdictional battle between the Feds and locals was to actually be able to take control of a case, prosecute it. Those are not the jurisdictional battles. They are actually fighting over not taking the case because it is so costly.

The other surprise was that I was told by local law enforcement that unless there are 500 pounds of marijuana involved, they do not even bother. Can you confirm that, that what was told to me is basically true?

Ms. KEMPSHALL. At one point in time, there was a minimum mandatory for Federal prosecution. I do not know that that is in place today, but I think that you see that we have had a plus-up of Border Patrol, and when you plus-up one agency—which is important, because the Border Patrol agents have an incredibly difficult job in Arizona and across the border. But we needed to plus-up the rest of the infrastructure, the Marshals Service, the judges, the jail systems. The Federal system, the infrastructure for the entire criminal justice Federal system was at a breaking point when we had so many illegal immigrants being arrested, the drugs were coming across the border; they were having the minors bringing them across; the scouts in the mountains. It was just a difficult way to get these people prosecuted.

Chairman JOHNSON. Let us talk about what might work. General McCaffrey, you were talking fencing will in the right spot if it is constructed properly. I know Operation Strong Safety, when I read that report, it sounds pretty strong that having more boots on the ground, more enforcement officers at the border, sounds like that actually works. I do not know how many more we would need. I am looking at the budget right now, the Border Patrol, those 60,000 agents cost about \$12 billion per year. Obviously, we need a cost-benefit analysis on that. But, Chief Deputy Martinez, can you talk a little bit about boots on the ground, how effective Operation Strong Safety has been?

Mr. MARTINEZ. It has been very productive, and it has helped us tremendously on our end. Being 70 miles north of the Rio Grande River, it has helped us where we see minimal dropoffs, we see groups of 20 versus groups of 70 being crossed through the brush. And a lot of this issue has to do with boots on the ground, but with that you also need your technology to work hand in hand so we can make every effort to interdict every single person that comes across, because that one person that is—

Chairman JOHNSON. You can detect, but if you do not apprehend, it does not do you much good. But then if we apprehend and we just process—

Mr. MARTINEZ. That is correct. And just to reinforce what you just mentioned is the fact that if you do not have the prosecution at the level it should be at—I am referring to the USA. If they are not capable of handling this type of volume of cases these cases are going to walk because they have done it before in Brooks County. We literally have caught the scout. We literally have caught the smuggler with the people.

Now, once they interview the people being transported, if they can tie in that particular scout to that smuggling organization well that is a plus. But if they do not that person is going to walk. Pretty much he is going to walk because he probably does not have any type of identification on him, no driver's license or anything like that.

Chairman JOHNSON. So what percent of those scouts walk? What percent of people you want to prosecute we just do not?

Mr. MARTINEZ. A very good percentage of them walk.

Chairman JOHNSON. OK. Senator Carper.

Senator CARPER. Thanks, Mr. Chairman.

We have not talked about southbound inspections, and as you know, the drugs go north and money and guns go south. And I just want to ask you to each take maybe less than a minute to talk about this issue and perhaps what more we can do, ought to do, to slow the flow of weapons and cash or other illicit drug proceeds into Mexico, but also into Canada. Just take about half a minute on each of those. General McCaffrey, would you lead us off?

General MCCAFFREY. I think we are remiss. We owe the Mexicans better work. When I hear "money seizures," I kept asking, "What is our annual money seizure rate?" And somebody had mentioned a figure of \$45,000. We know that it is literally billions of dollars moving across the frontiers back into Colombia, Peru, Ecuador, Mexico. They go in \$100 bills, and these are industrial strength shipments, and we are not even remotely seizing a fraction of it.

The same with weapons. When we get to weapons, you get into this political sensitivity that is just beyond belief. How can we possibly allow people to buy semiautomatic AK weapons on our side of the border by the dozens without in some way controlling this?

And now, finally, there is just no easy solution. I stood there at the Bridge of the Americas, I guess, in El Paso, and you look into Mexico. If you tried to stop north-south traffic, there is no infrastructure to do that. You would back traffic up for 20 miles the first day. There is no plazas to inspect them.

And, by the way, when you look across the bridge—I was sitting with a Border Patrol officer when I was doing this. It was getting dusk. There is no taillights going on on cars hitting the Mexican side of the border. They are not looking at them either. So there is just nothing there that comprehensibly finds guns and dollars going back into Mexico.

Senator CARPER. All right. Thank you.

Very briefly, 30 seconds, what can and should we be doing to stop the flow of weapons and money heading south?

Mr. TORRES. Sure. Back in 2010, we surged a number of resources from throughout the country down to the border for that purpose exactly, to inspect guns and money going south.

Unfortunately, to do that we had to pull resources from all the major cities, and so my counterpart in New York at the time was screaming and yelling, "I have all these issues in New York, and I have to send people to the southwest border." Yet it is the drugs from the southwest border that are coming up to New York that is creating the impact. And so ultimately it is about the resources to create those teams and make them permanent.

Senator CARPER. Thank you.

Ms. Kempshall, just very briefly.

Ms. KEMPSHALL. Yes, sir. It is critically important that we not only stop the money southbound, because that is why the drug cartels are in the business, but also the weapons. And so we are using intelligence to help drive those operations and coordinated activity between law enforcement investigations and our port officials so that we are having investigations and interdiction operations work together to help focus our efforts on the appropriate targets.

Senator CARPER. All right. Thank you.

Mr. Martinez, very briefly, same question.

Senator CARPER. Yes, sir. We had the State interdictor officers in Brooks County. Within 3 days, they were at half a million dollars. Within 3 days. So you do have a fixed checkpoint on the main corridor, just extend it over to the southbound lane and secure it there.

Senator CARPER. All right. Thank you.

Mr. COSTIGAN. Of course, ours is a little different. Ours is going north instead of south. Concerns for us are usually guns going north to the Canadian—different culture. Our guns cause them problems up there also.

But in order to work with our limited resources, I believe that we need to increase our risk assessment activities so we can properly utilize the limited resources that we have to target what we need to target.

Senator CARPER. All right. Thanks.

The last question I would have, I just want you all to give us some advice. Let us just say you are sitting on this side of the dais and not that side, and you are Senators for a day or at least for a hearing. Give us some ideas what you would do next, maybe one or two things that each of you would do if you were in our jobs to address the problems that we are talking about here today. General.

General McCaffrey. I think it has come out all morning: a coherent, comprehensive, long-term plan to provide enhanced security all along that frontier, combined with sensible immigration policy.

Senator CARPER. All right. Thank you.

Mr. TORRES. Yes, I absolutely echo those thoughts. Ultimately, if I were sitting in your chair—I know how difficult it can be, but it is really developing and working together to come up with a comprehensive immigration plan as well as securing the border.

Senator CARPER. That sort of goes out to the size of the haystack, does it not?

Mr. TORRES. Right, exactly.

Senator CARPER. OK. Ms. Kempshall, what would you do? A couple of things.

Ms. KEMPSHALL. Senator, I think that you are in this hearing taking very important steps. You are understanding the threat, because before I lived in Arizona and Texas, I lived in Georgia, and I did not have a full appreciation of when somebody talked about the challenges along the southwest border what they were. And I think it has to be a holistic approach. There is no easy fix for a problem of this size. Just as I said in my statement, it is an immense drug-trafficking problem, and no one agency can solve that problem. But if you bring agencies together, understand their missions, and understand how we can bring those missions together to secure the border, we are in a much better situation. And then let those agencies talk to you about what tools they need to enhance their capabilities along the southwest border, because I know when I worked in Washington for DEA, I may not have had a full appreciation of the challenges that law enforcement had out in the field. But when you bring those law enforcement agencies together and let us come talk to you and say, "This is what we need, this is what is working, and this is what is not working," we will be better equipped to handle that problem.

And you mentioned it earlier about the guest worker program. When you hear "illegal immigration," I may think one thing. You may think another. But we have to define that. We have guest workers that we need to come in to work our fields. But then we have the folks that I deal with that are truly coming into our country to bring evil in, to destroy our communities, to make sure that they have continuing sources for their supply of illegal drugs. And so that is where the conversation needs to begin.

Senator CARPER. OK. Good. Thank you so much.

Mr. Martinez, what would you do?

Mr. MARTINEZ. Yes, sir. I would continue the information-sharing collaboration as we are doing now, implement technology to assist in that. Of course establish an immigration plan that is going to be bipartisan, that is going to help the country, the Nation as a whole, and understand the mission of it.

Senator CARPER. All right. Thank you. Mr. Costigan.

Mr. COSTIGAN. I would agree. I think we need to continue information sharing like you are doing here, but also continue and encourage information sharing through other entities with all the agencies involved. If we fail to share the information, we will not be able to take effective action against what our problems are.

Senator CARPER. All right. Thank you.

Mr. Chairman, my last year as Governor I was given the opportunity to be the founding vice chairman of something called the American Legacy Foundation, which is the money flowed out of the tobacco settlement between all the States and the tobacco industry. And the idea was to go after the root cause. And what we did is we created the Truth campaign, and it was a public media strategy developed by young people to convince other young people not to smoke, not to use tobacco, and if they were, to stop. Enormously successful.

And in Montana, they actually used the same kind of approach to deal with meth, and my recollection, if I am not mistaken, Bryan, that was enormously successful as well.

I just would leave us with a thought. There are actually some strategies that work pretty well with tobacco and with meth, and one of my favorite sayings is, as the Chairman knows, find out what works, do more of that.

Thank you.

Chairman JOHNSON. Thank you, Senator Carper.

Well, obviously coming from a manufacturing background, I solved a lot of problems, and root cause analysis is essential. But you have to first understand the reality. That is what we try to do here.

Senator Carper kind of asked our wrap-up question. I have learned that from him, giving all the witnesses an opportunity to make a final point. I guess I will go and do the same thing. But, Ms. Kempshall, when you think about your closing comment, you talked about intelligence. I would kind of like to hear something about that. But, in general, this hearing really was about transnational crime, that reality, that element of this. And, again, my concern is the nexus between transnational crime, the growing threat of Islamic terror, international terrorists, homegrown extreme violence.

As Ms. Kempshall was talking about, there are two parts to this: we have illegal immigrants coming here working, and we have people coming here to do this country harm—whether it is drug cartels, human sex trafficking, I mean evil people. And that we must stop.

But, again, just go down the list, your final thoughts, potentially address my final points here. General McCaffrey.

General McCAFFREY. Well, I thank you for bringing attention to this issue. One of the other cautions when I give talks to a Rotary Club or Chamber of Commerce, people say, “Well, what happens when violence comes across the frontier?” It is already here. There are 1,000 communities right now, 200 major metropolitan areas, where the principal threat to the American people and organized crime comes out of Mexican cartels. So we should not talk about when it happens. It is already taking place.

Chairman JOHNSON. Mr. Torres.

Mr. TORRES. Transnational crime has to cross one of our borders, whether it is a land border, a seaport, airport, or even our cyber border. And we see the impact of that in our communities every single day. While it may be occurring on the southwest border or on the Canadian border or even at Dulles Airport, ultimately it ends up in our back yards with regards to drugs, national security, human and sex trafficking—we saw too much of that—and so thank you for focusing on this today.

Chairman JOHNSON. Thank you. Ms. Kempshall.

Ms. KEMPSHALL. Senator, I think that we must understand when it comes to drug-trafficking organizations that these are criminal organizations, and they bring their drugs to the United States because we have an appetite for illegal drugs. And I think to address that problem, we must continue those education efforts. We must continue to teach our children the dangers of drug abuse, even ex-



perimenting once with dangers of illicit drugs. And we also must use that intelligence that we develop from our investigations and our interdictions to make Arizona, one of the primary gateways, an undesirable route for the cartels. If we can push them out of their comfort zone, then we can make them more vulnerable. And if it is more difficult for them to bring their drugs into the United States and there is less of an appetite for their product in the United States, then we are going to break the backs of these drug cartels. But the only way that we can do that is to appropriately target our limited resources on the most significant drug-trafficking organizations impacting our communities.

So I think it is a multiple approach: education, and using intelligence to drive our enforcement strategies, combining Federal, State, local, and tribal resources against those significant targets.

Chairman JOHNSON. Thank you. Chief Deputy Martinez.

Mr. MARTINEZ. Yes, sir. Until the United States is serious about securing the border, the transnational criminal organizations will continue to operate on the border, within small communities, and throughout major cities of the Nation. We need to have a balance here because of our humanitarian issue that we have in Brooks County with all those bodies dying. We need to make sure that our national security issues are addressed to where we can identify the bad guy versus those that come in to assist the economy. Also, the crime is here, and it will continue to grow.

Thank you.

Chairman JOHNSON. Mr. Costigan.

Mr. COSTIGAN. Over 30,000 Americans died last year from drug overdoses. I think that is a threat to our communities every day. As we deal with that, I think what we can do as law enforcement, we have to encourage intelligence and information sharing to accomplish our mission and make it stronger.

Chairman JOHNSON. Well, again, thank you all. I know you spent a lot of time on your testimony. It was extremely helpful. It helps us create that record, lay out that reality. So, again, thank you for your thoughtful testimony, your thoughtful answers to our questions.

This hearing record will remain open for 15 days, until April 8 at 5 p.m., for the submission of statements and questions for the record.

This hearing is adjourned.

[Whereupon, at 12:01 p.m., the Committee was adjourned.]



## A P P E N D I X

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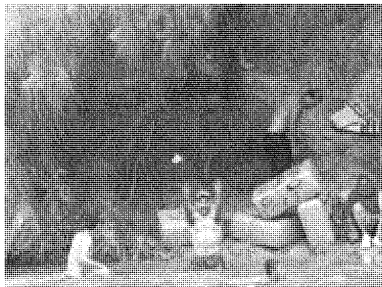
### **Opening Statement of Chairman Ron Johnson** *"Securing the Border: Understanding the Presence of Transnational Crime"* March 24, 2015

Good morning and welcome.

Last week, the committee heard from Texans and Arizonians with first-hand knowledge of the problems they are confronting on the U.S.-Mexico border. The witnesses presented us with a consistent message: The border is not secure. Our witnesses testified that landowners do not feel safe in their own homes, that illegal crossings are becoming more violent, and that transnational criminal activity is rampant.

I witnessed many of these realities last month when I traveled to the Rio Grande Valley sector with Senators Carper and Sasse. On the Mexico side, towns are often controlled by drug- and human-smuggling cartels that roam the shore, surveying our side with impunity. The nexus between drug and human trafficking needs to be understood. These criminal activities complement each other.

The level of violence and control by drug cartels on the Mexican side of the border is one of the most underreported aspects of border security. The lack of drug enforcement on the Mexican side is well illustrated with the following picture:



Transnational criminal organizations are involved in drug smuggling, human smuggling, weapons smuggling, extortion, kidnapping for ransom, robbery, and terrorism. Mexican cartels directly supply illicit drugs to cities throughout the U.S. and rely on U.S.-based gangs to further distribute drugs within the U.S. Wisconsin is only one of many states experiencing a significant increase in heroin use, with much of the heroin transiting through Mexico.

According to one study, drug smuggling is a \$320 billion business worldwide, with almost half of the revenues being generated within the Americas (\$150 billion).

Human trafficking and smuggling is a profitable part of transnational crime. Often, an individual or family must pay the cartel for permission to cross the border, and, in many cases, must actively assist the cartel in its drug operations. It is not unusual for individuals after a successful crossing to be kidnapped by the smugglers they paid to help them cross. They are then held until their family back home pays a ransom for their release.

There is also a legitimate concern that terrorists from around the world could exploit our country's porous borders to enter the U.S. undetected. The potential for exploiting our lack of a secure border must be taken seriously given that there was a 70 percent increase in other-than-Mexicans (OTMs) crossing the southwest border from fiscal year 2013 to 2014. This included individuals from Central American countries, Iraq, Syria, and Egypt.

Today we will hear from a variety of witnesses to learn more about the transnational criminal threats at both our southwestern and northern borders and how the consequences of unsecure international borders threaten the entire nation. Importantly, border security is not just about immigration reform. Border security is about national security and public safety.

I thank the witnesses for their willingness to share their experiences and I look forward to their testimony.

**Opening Statement of Ranking Member Thomas R. Carper**  
***“Securing the Border: Assessing the Impact of Transnational Crime”***  
**March 24, 2015**

*As prepared for delivery:*

Last week, we heard from several people who live and work along the southwest border about some of the border security challenges that impact their communities. Today, we will continue that conversation and dig even deeper into the transnational crime that occurs along our borders and throughout our country.

Over the course of the last several years, I have made a number of trips to both our southern and northern borders. Most recently, I had the pleasure of joining our Chairman and Senator Sasse on a trip to the Rio Grande Valley in South Texas. During these trips, we saw first-hand the dedication and expertise of the men and women who put their lives on the line each and every day to keep our borders secure.

And because of the efforts of these brave men and women, along with the quarter of a trillion dollars that American taxpayers have spent on border security over the last ten years, we have made significant progress in securing our borders. In fact, I appreciated General McCaffrey pointing out in his testimony that ‘by many measures, the U.S. – Mexico border is more secure than it has ever been.’ I couldn’t agree more.

Since 2003, for example, we have more than doubled the size of the Border Patrol. We have constructed more than 600 miles of new fencing, and deployed sophisticated cameras, sensors, and radars across much of our border with Mexico. Today, we are deploying drones and aerostats high in the sky, as well as fixed and mobile observation towers, providing situational awareness for our agents on the ground.

Yet, while many border communities are among the safest towns in America, we know that there is still much work to be done. And, we know that transnational criminal organizations are a real danger. Transnational crime, however, isn’t a just border issue. It’s much broader than that. It is a national security issue, and it’s an issue that touches all of our communities.

For example, transnational crime can touch our friends and family in the form of drug addiction. It can victimize thousands who are brought into this country for sex trafficking or slave labor. It can hurt our businesses and bring crime and violence to our neighborhoods. And, it has the potential to bring national security threats to our borders, such as persons with possible terrorist ties.

Today’s transnational criminal organizations are agile and global in reach, and they will do just about anything, and will stop at almost nothing, to carry out their illicit and very lucrative operations. So how do we disrupt and dismantle these criminal organizations?

I believe we must continue to support the men and women combating these criminal networks along our borders and throughout our communities. As my colleagues have heard me say before,

I'm a strong believer in providing our border personnel with 'force multiplying' technology that will help them do their jobs more effectively. We also need to share information – particularly intelligence – more efficiently so that we can act quickly and leverage resources across the federal, state, and local level.

I look forward to hearing from our witnesses today about what tools and resources are needed to better secure both our southern and northern borders.

That said, I believe our homeland defenses should not begin on the 'one yard line' of our borders, as General John Kelly, Commander of U.S. Southern Command and Department of Homeland Security Secretary Jeh Johnson have stated before. In many cases, it should begin much farther away.

Many of the criminal organizations that operate along our southwest border have roots deep inside Mexico and throughout Latin America. In parts of Central America, we know that gangs and other criminal organizations continue to threaten prosperity. Some might even say they threaten democracy itself in the places where they operate.

That is why it is so important that we seize this window of opportunity to help our neighbors in Central America grapple with a variety of security, governance and economic challenges. By doing so, we will address one of the root causes of transnational crime and enhance the security of our nation. We will be focusing on this issue at tomorrow's hearing, so I will expand upon this topic much more at that time.

Finally, I believe we can address transnational crime in one other very important way – and that is by confronting America's insatiable appetite for illegal drugs. Our demand for illegal drugs fuels the power, impunity, and violence of criminal organizations around the globe. We must continue to focus on our nation's addiction to drugs and continue to identify effective programs to reduce this crippling threat to our nation's future.



**STATEMENT FOR THE RECORD  
SUBMITTED BY GENERAL BARRY R. McCAFFREY (USA, Ret.)  
TO THE U.S. SENATE HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS COMMITTEE  
MARCH 24, 2015**

Chairman Johnson, Ranking Member Carper, thank you for the opportunity to provide testimony for this hearing on the topic of “*Securing the Border: Understanding the Presence of Transnational Crime*.” This statement will focus on how drug smuggling and transnational crime at our borders affect the nation at large.

**The Border Security Challenge**

The Department of Homeland Security and several of its subordinate agencies (e.g. U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and the U.S. Border Patrol (USBP)) are primarily responsible for protecting our borders and preventing the entrance of unauthorized individuals, terrorists, contraband, narcotics, and weapons of mass destruction into the United States. DHS and our border security agencies are ably supported by the Department of State’s visa issuance activities, the Department of Treasury’s anti-money laundering and terrorist financing programs, several Department of Justice agencies (e.g. DEA and FBI) that focus on transnational crime and drug trafficking, and multiple agencies in other departments that provide essential intelligence and other critical support.

Collectively, these federal agencies have to address a multiplicity of threats, including: cyber attacks and crime; drug trafficking; human trafficking; identity theft; illegal immigration; intellectual property theft; manipulation of securities and commodities markets; money laundering; penetration of financial systems; sophisticated frauds; and terrorism (and its financing). Transnational criminal organizations are engaged in all of these activities.

Border security is an enormous challenge given the volume of activity at our borders. On any given day last year 678,000 individuals and 300,000 privately owned vehicles crossed our land borders from Canada or Mexico, almost 300,000 individuals landed at one of our international airports, while 50,000 entered through our sea ports, and some 70,000 truck, rail, and sea containers entered our land and sea ports of entry.<sup>1</sup> As the cyber attacks by Iran and North Korea against two U.S. corporations last year underscored,<sup>2</sup> even if we were able to secure our physical borders, we would still be vulnerable to attacks from abroad.

As a nation, we have made enormous progress since the 9/11 attacks to increase the security of international trade flows, identify who is traveling to the United States before they arrive, and to be able to identify individuals who may pose threats or who merit additional scrutiny by a CBP

<sup>1</sup> <http://www.cbp.gov/newsroom/stats/typical-day-fy2014>.

<sup>2</sup> These two cyber attacks are summarized in Office of the Director of National Intelligence, Opening Statement by the Honorable James R. Clapper, Director of National Intelligence to Worldwide Threat Assessment Hearing, Senate Armed Services Committee, February 26, 2015.

STATEMENT BY GENERAL BARRY R. MCCAFFREY (USA, RET.) FOR 24 MARCH 2015 U.S. SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE HEARING ON "SECURING THE BORDER: UNDERSTANDING THE PRESENCE OF TRANSNATIONAL CRIME"

officer when they arrive at a port of entry. While our security is much improved, there are still significant vulnerabilities that must be addressed.

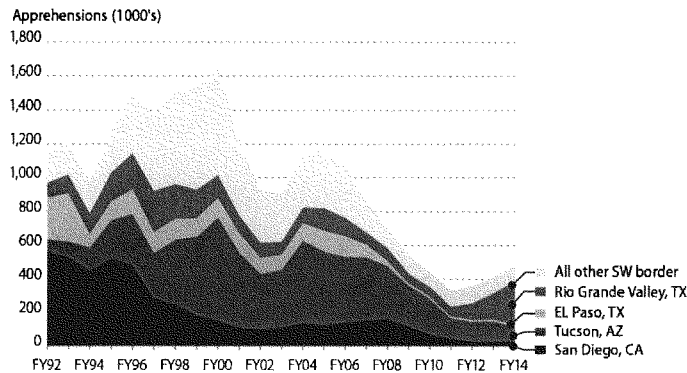
#### **The U.S. – Mexico Border: our most vulnerable flank**

The 2,000-mile border with Mexico is the principal vector for the introduction of illegal drugs and unauthorized immigration into the United States. Mexican transnational criminal organizations dominate drug and human trafficking at the U.S. – Mexico border.

The report recently released by the Texas Department of Public Safety provides great detail on the activities of Mexican drug cartels in border communities, particularly in the Rio Grande Valley, where human trafficking has surged in recent years.<sup>3</sup>

By many measures, the U.S. – Mexico border is more secure than it has ever been. Some 700 miles of fences and barriers have been erected along the border and the number of Border Patrol agents assigned to the border has doubled since 2001. The number of illegal border crossers apprehended by the Border Patrol has plummeted by 78 percent since 2000, as the following graphic demonstrates:

***U.S. Border Patrol Apprehensions of Deportable Aliens, Southwest Border, by Selected Sectors, FY1992-FY2014<sup>4</sup>***



Additionally, the composition of the migrant population has shifted. Last year, 53 percent of migrants apprehended at the border were not Mexican, whereas 10 years ago, 93 percent of individuals apprehended were Mexican.<sup>5</sup>

<sup>3</sup> Texas Department of Public Safety (DPS), *Operation Strong Safety Report to the 84th Texas Legislature and Office of the Governor*, Feb. 2015, Unclassified Version.

<sup>4</sup> Figure 6, page 22, Congressional Research Service report R42138, *Border Security: Immigration Enforcement Between Ports of Entry*, December 31, 2014.

<sup>5</sup> Washington Post, "Border Patrol statistics show changing migration pattern," November 14, 2014, [http://www.washingtonpost.com/politics/border-patrol-statistics-show-changing-migration-pattern/2014/11/05/727c9132-6534-11e4-bb14-4cfeae742d5\\_story.html](http://www.washingtonpost.com/politics/border-patrol-statistics-show-changing-migration-pattern/2014/11/05/727c9132-6534-11e4-bb14-4cfeae742d5_story.html)



STATEMENT BY GENERAL BARRY R. MCCAFFREY (USA, RET.) FOR 24 MARCH 2015 U.S. SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE HEARING ON “SECURING THE BORDER: UNDERSTANDING THE PRESENCE OF TRANSNATIONAL CRIME”

The significant decline in the number of individuals who seek to enter the United States across the Southwest Border is likely the result of multiple factors, including: greater USBP enforcement capabilities; more effective USBP operations; reduced economic opportunities in the United States; greater internal enforcement within the United States; and changing economic and demographic conditions in Mexico.

The surge of migration (to include unaccompanied children last year) in the Rio Grande Valley Border Patrol Sector – more than 25 percent of apprehensions along the SW Border now occur in this sector – suggests that additional federal enforcement resources and broader federal-state cooperation are required there.

Border cities such as El Paso and San Diego are regularly ranked among the safest large cities in the United States based on reported crime rates. However, it would be a stretch to say that the border and border communities are secure when CBP lacks a high-confidence ability to detect cross-border tunnels, seizes just 5-10 percent of the illegal drugs smuggled across the border, and interdicts less than 1 percent of the \$20 billion plus laundered to Mexico each year.

In 2010, the Border Patrol stated that it controlled just 129 miles of the 2,000-mile U.S. – Mexico Border and 32 miles of the 5,500-mile U.S. – Canada border (USBP subsequently abandoned this metric). As a former infantry commander, I find it difficult to believe that a Border Patrol that is only the size of a U.S. Army infantry division can secure 7,500 miles of land borders or that a Border Patrol force smaller than an Army brigade combat team can secure the entire U.S. – Canada border.

The relative lack of “spillover violence” in U.S. border communities in Texas, New Mexico, Arizona, and California is principally the result of decisions by the Mexican drug trafficking organizations to follow different rules of engagements within the United States. They clearly have the capability to act as violently in the United States as they do in Mexico. They elect not to act as they do in Mexico because of the capabilities, effectiveness, and integrity of our federal, state, and local law enforcement agencies and criminal justice systems. Simply stated, extreme violence in the United States would harm their bottom line. When Mexican transnational criminal organizations control smuggling across the U.S. – Mexico border and distribute heroin, cocaine, methamphetamines, and marijuana throughout the United States, we do not have a secure border and communities across the nation are imperiled.

We need to continue investing in security at our land borders and require DHS to demonstrate the effectiveness of its enforcement strategies. The reality is that despite significant improvements in the Border Patrol’s capability along the US-Mexico border, most individuals who attempt to cross the border illegally eventually succeed. The Congressional Research Service estimates that since 1994 the probability of being apprehended while crossing the border has averaged 0.49 – in other words an individual is more likely to make it into the United States than to be apprehended by the Border Patrol. This figure is substantially lower than CBP estimates.<sup>6</sup>

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<sup>6</sup> Congressional Research Service report R42138, *Border Security: Immigration Enforcement Between Ports of Entry*, December 31, 2014, page 25.

STATEMENT BY GENERAL BARRY R. MCCAFFREY (USA, RET.) FOR 24 MARCH 2015 U.S. SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE HEARING ON “SECURING THE BORDER: UNDERSTANDING THE PRESENCE OF TRANSNATIONAL CRIME”

This failure to prevent illegal migration across the U.S. – Mexico border (and the failure to prevent “overstays” by individuals who enter the United States legally by land and air) has resulted in a population of unauthorized immigrants in the United States that is estimated at 11.2 million individuals and widespread repercussions across the nation. While this number has been relatively stable for several years, the approximately 500,000 Mexican nationals who have returned to Mexico in recent years have been replaced by immigrants from the ‘northern triangle’ Central American countries of El Salvador, Guatemala, and Honduras. The 2.7 million immigrants from these three small countries now constitute 24 percent of the unauthorized immigrant population.

Approximately 8.1 million unauthorized immigrants were working or looking for work in 2012 – they constituted 5.1% of the labor force – or one in twenty workers. The U.S. economy has accommodated these workers and different sectors will continue to require both skilled and unskilled foreign workers to augment the domestic work force. More unauthorized immigrants should not be the answer to such labor needs as it has in the past. In our schools, children of unauthorized immigrants made up 6.9% of students enrolled in kindergarten through 12th grade in 2012. The vast majority (5.5 million) of these children were born in the United States and are, consequently, U.S. citizens.<sup>7</sup>

Additionally, law enforcement and intelligence collaboration between federal, tribal, state, and local agencies must be improved in border regions and in communities where Mexican cartels are active.<sup>8</sup> All too often, federal strategies and coordination centers inadequately incorporate state and local partners. CBP’s 2012 South Texas Campaign focused on integrating the activities of federal agencies and did not adequately incorporate capabilities of Texas agencies. In November 2014, DHS Secretary Jeh Johnson established three joint task forces to implement the DHS Southern Border and Approaches Campaign Plan.<sup>9</sup> Joint Task Force West, which is responsible for coordinating border-control operations along the U.S. -Mexico border, would certainly benefit from increased collaboration with tribal, state, and local agencies along the entirety of the Southwest border. Exercises of mass migrations plans – at the Southwest border and elsewhere – should also include state and local authorities.

<sup>7</sup> The statistics in these two paragraphs were excerpted from the Pew Research Center November 14, 2014 report *Unauthorized Immigrant Totals Rise in 7 States, Fall in 14*, [http://www.pewhispanic.org/2014/11/18/unauthorized-immigrant-totals-rise-in-7-states-fall-in-14/ph\\_2014-11-18\\_unauthorized-immigration-01/](http://www.pewhispanic.org/2014/11/18/unauthorized-immigrant-totals-rise-in-7-states-fall-in-14/ph_2014-11-18_unauthorized-immigration-01/)

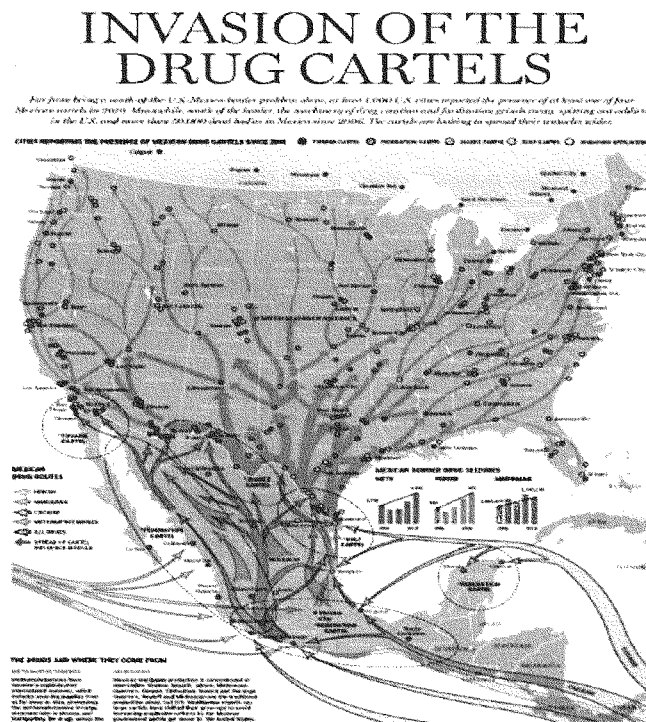
<sup>8</sup> As the title of the report suggests, the June 2014 GAO report *Border Security: Opportunities Exist to Strengthen Collaborative Mechanisms along the Southwest Border*, <http://www.gao.gov/products/GAO-14-494>, concluded that collaboration between federal, state, and local agencies could be improved.

<sup>9</sup> Memorandum entitled “Southern Border and Approaches Campaign”, issued by DHS Secretary Johnson on Nov 20, 2014, [http://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_southern\\_border\\_campaign\\_plan.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_southern_border_campaign_plan.pdf).

STATEMENT BY GENERAL BARRY R. MCCAFFREY (USA, RET.) FOR 24 MARCH 2015 U.S. SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE HEARING ON "SECURING THE BORDER: UNDERSTANDING THE PRESENCE OF TRANSNATIONAL CRIME"

**Mexican Drug Cartels: Active in more than 1,000 U.S. Cities,<sup>10</sup>**

Mexican cartels are operating throughout the United States. According to the Office of National Drug Control Policy, Mexico is the primary source of heroin to U.S. markets,<sup>11</sup> the primary foreign source of methamphetamine and marijuana destined for U.S. markets, and 90-95% of U.S.-destined cocaine, which originates in South America, arrives on U.S. soil through Mexico.<sup>12</sup> The cartels are actively engaged in drug trafficking down to the retail level throughout the United States. The following chart depicts their presence in more than 1,000 U.S. cities.<sup>13</sup>



<sup>10</sup> The U.S. Department of Justice's National Drug Intelligence Center stated in its 2011 *National Drug Threat Assessment* that "Mexican-based TCOs were operating in more than a thousand U.S. cities during 2009 and 2010" (page 8).

<sup>11</sup> Office of National Drug Control Policy, *National Drug Control Strategy*, 2014.

<sup>12</sup> Office of National Drug Control Policy, *National Southwest Border Counternarcotics Strategy*, 2013.

<sup>13</sup> *Business Insider*, July 16, 2012 article "Mexican Drug Cartels Have Infiltrated All Of These US Cities," <http://www.businessinsider.com/this-graphic-shows-what-mexican-cartels-and-drugs-come-to-your-town-2012-7>.

STATEMENT BY GENERAL BARRY R. MCCAFFREY (USA, RET.) FOR 24 MARCH 2015 U.S. SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE HEARING ON “SECURING THE BORDER: UNDERSTANDING THE PRESENCE OF TRANSNATIONAL CRIME”

### **The Effects of Transnational Crime Within the United States**

The 2011 *Strategy to Combat Transnational Organized Crime* states that “transnational organized crime (TOC) poses a significant and growing threat to national and international security, with dire implications for public safety, public health, democratic institutions, and economic stability across the globe. Not only are criminal networks expanding, but they also are diversifying their activities, resulting in the convergence of threats that were once distinct and today have explosive and destabilizing effects.”<sup>14</sup> Several states have recently conducted assessments of the day-to-day impact of transnational crime at the local level.

In **California**, the magnitude of transnational crime is astounding, as reported by the state Attorney General:<sup>15</sup>

- An estimated \$30 to \$40 billion in illicit funds is laundered through California commerce every year.
- Mexican transnational criminal organizations are suspected of trafficking 70 percent of the U.S. supply of methamphetamine through the San Diego port of entry.
- Mexican cartels have formed alliances with California prison and street gangs to control trafficking routes, distribute drugs, and kidnap, extort, and kill as necessary to protect their criminal activities.
- Cartels use “Panga” boats to smuggle drugs and people into California. Boats capable of carrying 12 tons of marijuana have landed as far north as Santa Cruz County.
- 305 drug-related transnational criminal organizations operate in California, and 18 street and prison gangs have ties to these organizations.

*Operation Strong Safety* highlighted the threat posed by transnational crime to **Texas**.<sup>16</sup>

- Seven of the eight major Mexican cartels operate throughout Texas, and they have enlisted transnational and statewide gangs to support their drug and human smuggling and trafficking operations on both sides of the border. These gangs are responsible for a disproportionate amount of crime, and they threaten the safety and security of communities across the state.
- Mexican cartels are the state’s most significant organized crime threat.
- Illegal aliens from countries documented by the U.S. Department of State as having a known terrorism presence continue to be smuggled into and throughout Texas.

<sup>14</sup> The White House, *Strategy to Combat Transnational Organized Crime*, July 25, 2011, <https://www.whitehouse.gov/administration/eop/nsc/transnational-crime>

<sup>15</sup> The following statistics were excerpted from the California Attorney General Report: *Gangs Beyond Borders: California and the Fight Against Transnational Organized Crime*, March 2014, [http://oag.ca.gov/sites/all/files/agweb/pdfs/toc/report\\_2014.pdf?](http://oag.ca.gov/sites/all/files/agweb/pdfs/toc/report_2014.pdf?)

<sup>16</sup> The following statistics were excerpted from the Texas Department of Public Safety (DPS), *Operation Strong Safety Report to the 84th Texas Legislature and Office of the Governor*, Feb. 2015, Unclassified Version.

STATEMENT BY GENERAL BARRY R. MCCAFFREY (USA, RET.) FOR 24 MARCH 2015 U.S. SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE HEARING ON "SECURING THE BORDER: UNDERSTANDING THE PRESENCE OF TRANSNATIONAL CRIME"

In **Chicago**, the Sinaloa Cartel dominated the distribution of drugs. In 2013, the Chicago Crime Commission declared the criminal organization's leader Joaquin "El Chapo" Guzman (who was subsequently captured in Mexico) Public Enemy Number One because of the deadly violence perpetrated by his organization. The last individual to be so designated was Al Capone in 1929.

These are not hypothetical threats; they are on-the-ground manifestations of the ability of transnational criminal organizations to penetrate our borders and to act throughout the United States. Our states, counties, and municipalities require continued federal assistance to address threats of this magnitude.

### **Conclusion**

The *Council on Foreign Relations* estimates that the cost of transnational organized crime is roughly 3.6 percent of the global economy and observes that drug traffickers have destabilized entire areas of the Western Hemisphere and caused 50,000 deaths in Mexico within the past six years.<sup>17</sup> Illegal drug trafficking generates enormous revenue for transnational criminal organizations. The United Nations estimates that illicit drugs generate some \$320 billion in global retail sales and \$150 billion in drug revenues in the Americas annually.<sup>18</sup>

Transnational crime is not stopping at our borders and is affecting communities and institutions across the United States. Transnational criminal organizations are active throughout the United States and involved in diverse criminal enterprises. Mexican cartels, whose primary focus is drug trafficking, are active in more than 1,000 U.S. cities, have formed alliances with local gangs, and have branched into other lucrative criminal activities. It would not be unreasonable to conclude that the Mexican drug cartels currently pose a greater national security threat than does ISIS. They certainly possess the capability to conduct deadly attacks just about anywhere in the United States.

The priority actions outlined in the *National Strategy to Combat Transnational Crime*<sup>19</sup> are a solid framework for confronting this threat to national security and include:

- Enhance Intelligence and Information Sharing.
- Protect the Financial System and Strategic Markets.
- Strengthen Interdiction, Investigations, and Prosecutions.
- Disrupt Drug Trafficking and Its Facilitation of Other Transnational Threats.
- Build International Capacity, Cooperation, and Partnership.

<sup>17</sup>Council on Foreign Relations, *The Global Regime for Transnational Crime*, June 25, 2013, <http://www.cfr.org/transnational-crime/global-regime-transnational-crime/p28656>

<sup>18</sup>Organization of American States, *The Economics of Drug Trafficking*, 2013, page 5, [http://www.cicad.oas.org/drogas/elinforme/informeDrogas2013/laEconomicaNarcotrafico\\_ENG.pdf](http://www.cicad.oas.org/drogas/elinforme/informeDrogas2013/laEconomicaNarcotrafico_ENG.pdf)

<sup>19</sup>The White House, *Strategy to Combat Transnational Crime*, 2011, [https://www.whitehouse.gov/sites/default/files/Strategy\\_to\\_Combat\\_Transnational\\_Organized\\_Crime\\_July\\_2011.pdf](https://www.whitehouse.gov/sites/default/files/Strategy_to_Combat_Transnational_Organized_Crime_July_2011.pdf)

STATEMENT BY GENERAL BARRY R. MCCAFFREY (USA, RET.) FOR 24 MARCH 2015 U.S. SENATE  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE HEARING ON “*SECURING THE  
BORDER: UNDERSTANDING THE PRESENCE OF TRANSNATIONAL CRIME*”

The porous U.S. – Mexico border continues to constitute a significant threat to national security. A continuing national security concern is that terrorist organizations, which have already formed a nexus with international drug trafficking organizations, might take advantage of existing smuggling routes and operations to introduce terrorists or weapons of mass destruction into the United States.

**Statement of John P. Torres, Retired Deputy Director  
U.S. Immigration And Customs Enforcement, before  
the United States Senate Committee on Homeland  
Security and Governmental Affairs, Regarding A  
Hearing On "Securing The Border: Assessing The  
Impact Of Transnational Crime"**

Release Date: March 20, 2015

Dirksen Senate Office Building

**Introduction**

Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee:

Thank you for the opportunity to discuss the impact of transnational crime and threats to our border based upon my experience serving at Department of Homeland Security (DHS), Immigration & Customs Enforcement (ICE) and its predecessor agencies. I retired in 2013 as the Special Agent in Charge of Homeland Security Investigations (HSI) for the Washington, D.C. Field Office where I had served for nearly four years. Upon the creation of DHS in 2003, I served in a variety of leadership roles for ICE, including the Deputy Director and Acting Director. I retired with nearly twenty-seven years of federal service, and twenty-five of those years as a special agent.

During the course of my career, ICE targeted transnational criminal

organizations at every critical phase in the cycle: internationally in cooperation with foreign counterparts, where transnational criminal and terrorist organizations operate; at our nation's physical border and ports of entry (POEs) in coordination with U.S. Customs and Border Protection, where the transportation cells attempt to exploit America's legitimate trade, travel, and transportation systems; and in cities throughout the United States, where criminal organizations earn substantial profits off the smuggling of aliens and illicit goods.

For the past twenty-five years, transnational organized crime has expanded dramatically in size, scope and impact—posing a significant threat to national and international security. DHS and ICE worked closely with our federal, state, local and international partners to bring together best practices to combat transnational crime and related threats to our national security. From the early days of ICE, we established a number of programs and initiatives as part of our strategy to strengthen border security, enhance public safety and fortify the national security of the United States.

We started at home by taking shared responsibility and swift action within our own borders to combat transnational violent gangs and ruthless human smuggling and trafficking organizations. We transformed the deportation process to improve efficiencies and developed technology that allowed us to expand programs to target criminal aliens. We created programs to identify and strengthen the interdiction of national security threats. We built and enhanced international capacity, cooperation, and partnerships. These areas are just the highlights of the priorities that we focused on to combat transnational crime during my ten years creating, merging and building ICE.



## **The National Security Impact of Transnational Crime**

From September 1997 through March 2000, I was assigned as an INS Agent detailed full time to the Headquarters of the Federal Bureau of Investigations in the International Terrorism Operations Section. In December 1999, while assigned to the Usama bin Laden Unit, we worked around the clock in response to a very credible threat of a terrorist plot to bomb unknown symbolic sites in the United States during millennium celebrations. It was during this time on December 14, 1999 that Ahmed Ressam, traveling under the alias of Benni Noris, was arrested while trying to enter the United States in a rented Chrysler 300M. In the trunk of that car were approximately 132 pounds of urea and aluminum sulfate (fertilizer); 47 ounces of a liquid similar to nitroglycerin; timing devices and other explosive making materials. FBI tests confirmed that these materials could make four medium sized bombs, which could be used as anti-personnel or car bombs.

At the time, Ressam was not cooperating, forcing us to race against the clock to potentially prevent a suspected New Year's Eve attack at an unknown location. In his possession were phone numbers to a contact that we traced back to New York City. These numbers led us to human smugglers operating from Montreal to Boston and New York City through Vermont. Ressam and his Algerian – Al Qaeda linked Armed Islamic Group (GIA), based in Montreal, used this human smuggling ring to their advantage to gain entry to the United States for some of its operatives. As early as 1999, al Qaeda linked terrorists were willing to use transnational criminal organizations to further their operations in the United States.

Today, the publicly released ICE strategy to combat transnational crime focused on the following principals:

- Attacking criminal networks within and beyond our borders;
- Prioritizing networks and pathways that pose the greatest threats;
- Participating and facilitating robust interagency engagement; and
- Pursuing a coordinated regional approach that leverages foreign partners.

At ICE, we worked hard to collaborate with federal, state, local partners at every opportunity. A coordinated strategy of attacking criminal networks at multiple locations along the illicit travel continuum was designed to reduce pressure on law enforcement resources and assist partner nations in preventing or disrupting organized alien smuggling within their own territories.

Over the years, in part due to the pressure applied through new national security initiatives, terrorists have increasingly turned to crime and criminal networks to fund and facilitate their illicit activities. A threat of particular concern is the convergence of terrorist travel and human trafficking. One case exemplified that concern. In 2012, ICE publicly released information regarding an HSI Attaché Quito terrorist mobility investigation that was conducted jointly with HSI Atlanta, the Department of Justice, the FBI, and Ecuadorian authorities through the HSI Quito Transnational Criminal Investigative Unit (TCIU). The investigation focused on a criminal travel network engaged in facilitating the illicit transnational movement of suspected members of terrorist organizations like Al Qaeda, Tehrik-i-Taliban Pakistan (TTP), and Jaish-e-Mohammed.

In September 2011, three Pakistani citizens pleaded guilty in the District of Columbia to one count each of conspiracy to provide material support to the Tehrik-I-Taliban (TTP), often referred to as the Pakistani Taliban, a designated foreign terrorist organization. As part of their plea agreements, the defendants agreed to a stipulated order of removal to Pakistan upon the completion of their sentences.

## **Securing the Borders Against Transnational Crime**

### **Border Enforcement Security Task Forces (BESTs)**

In 2006, ICE established the BEST program, which currently operates in 35 locations throughout the United States, Puerto Rico and Mexico. BEST leverages over 1000 federal, state, local, and foreign law enforcement agents and officers representing over 100 law enforcement agencies and provides a co-located platform to conduct intelligence-driven investigations to identify, disrupt and dismantle transnational criminal organizations along the Southwest and Northern Borders and at our nation's major seaports. Since the creation of BEST over 10,000 cases have been initiated. These crimes include weapons and munitions smuggling, money laundering, human smuggling, human trafficking, customs fraud, and cybercrime violations.

For example, the Hampton Roads Seaport BEST in Norfolk Virginia focuses on trade-based money-laundering, narcotics trafficking through cargo containers, weapons smuggling and counterfeit goods. In 2010, container terminals in Norfolk and Portsmouth, Va., handled 87,000 cargo containers on average. Due in part to the completion of the Heartland Corridor that runs

through the Midwest and the expansion of the Panama Canal, the port is likely to see an increase in direct foreign traffic, including super freighters which will significantly increase the amount of containers, crews and ships entering the United States via the Port of Virginia. The first early success of this Seaport BEST was in April of 2011 with the seizure of 55 kilograms of cocaine found in a vessel that transited the Panama Canal and docked at the Port of Virginia.

### **Criminal Alien Program**

In 2005 was the Director of ICE's Detention and Removal Operations (DRO), today known as Enforcement and Removal Operations (ERO). The name change was in part due to the fact that we transformed the removal process for foreign nationals ordered deported from the United States. By building in a number of efficiencies into the process, ICE was able to take over the Criminal Alien Program (CAP) which had previously been run by the Special Agents in the Office of Investigations, today known as Homeland Security Investigations (HSI).

Using new technologies, ICE created a number of new programs to prioritize foreign nationals convicted of crimes committed here in the United States. These programs included the Detention Enforcement and Processing of Offenders by Remote Technology (DEPORT) Center. This Chicago based center incorporated the use of video conferencing allowing officers to interview felons serving their sentences at federal prisons. This reduced the amount of time that an offender spent in ICE detention, allowing the agency to utilize those detention beds for other priorities.

Another important program targeting criminal foreign nationals was the Violent Criminal Alien Section (VCAS). VCAS screens recidivist criminal aliens encountered through ICE and local law enforcement to seek criminal prosecution to mitigate the risk of future recidivism. Integral to success in this effort is the collaboration with the Offices of the United States Attorneys to prosecute the charged criminal offenders.

### **Human Trafficking and Smuggling Investigations**

While at ICE, I also served as the Deputy Assistant Director for Smuggling and Public Safety. We launched several developed several initiatives and priorities, including improving ICE's ability to work with interagency and international partners to disrupt and dismantle international human smuggling and trafficking networks, as well as the organizations along their entire routes. This is a critical priority for ICE because illicit organizations can take advantage of established smuggling routes to smuggle humans, drugs, weapons, cash and potential terrorists.

For many years the United States has been a primary target destination for smugglers and traffickers who have been responsible for tens of thousands of men, women and children entering the country illegally each year. This international criminal market remains extraordinarily lucrative. Sadly, a significant number of children are brought to the United States in the hands of ruthless smugglers placing them at great risk.

In May 2003, police discovered dozens of smuggled immigrants—men, women, and children—locked in a hot, airless tractor-trailer outside

Victoria, Texas. The trailer, originally bound for Houston, had been unhitched and abandoned 175 miles from the Mexico border in a botched smuggling job. Ultimately, 19 people died in that trailer, including a seven year-old boy. It was the deadliest case of human smuggling in the United States in fifteen years.

Last year, unaccompanied children entered the United States at increasingly alarming rates. Some of these children were placed in the hands of smugglers by adults, even family members, to seek a better life for these children in hopes of some day becoming legalized in the United States. Not only does this pose a great risk to these children, but also poses a serious officer safety threat to the men and women who patrol our borders and investigate these ruthless organizations.

### **Transnational Gangs**

Transnational gangs often conspire with other dangerous criminal organizations, which allow them to mature from small autonomous criminal groups into larger, international criminal enterprises engaged in human smuggling and trafficking, narcotics smuggling and distribution, money laundering, weapons and arms trafficking, kidnapping, and extortion.

In February of 2005, ICE launched Operation Community Shield, an ICE-led anti-gang program, which combines ICE's statutory and administrative enforcement authorities with law enforcement partnerships. These targeted enforcement operations have led to the development of information critical to the successful prosecution of transnational gang members for conspiracy and racketeering related violations. Since its inception in 2005, according to

ICE statistics, Operation Community Shield has led to the arrests of more than 32,000 gang members and associates representing more than 2400 gangs and cliques. Of these, 451 arrests were of gang leaders, and 14,994 of the arrested suspects had violent criminal histories.

The impact of transnational crime as it relates to violent gangs can be underscored by looking at a case study of MS-13 in Northern Virginia, where I served as Special Agent in Charge for the last three and a half years of my career. As early as 2003, MS-13 violence terrorized the community:

- 2003: Murder of Federal Witness Brenda Paz
- 2004: Murder of Jose Sandoval
- 2006: Murder of Shannon Angeles
- 2007: Murder of Melvin Reyes
- 2008: (Summer of Terror)
  - August 2008 (Shooting of Juvenile)
  - September 2008 (Shooting of pregnant female)
  - September 2008 (Shooting/Paralysis of victim)
  - October 2008 (Triple Shooting/ Disfigurement of 3 teens)

In 2011, in response to the growing trend of transnational gangs branching into the underworld of juvenile sex trafficking, the United States Attorney's Office for the Eastern District of Virginia (EDVA) created a Human Trafficking Task Force which was co-chaired by EDVA, ICE and the Federal Bureau of Investigations. It was housed at the local ICE Office in Northern Virginia and focused on training, victim services and law enforcement. We dedicated full time prosecutors and agents with a "zero

strike” intake policy. Within the first eighteen months, the Task Force rescued 36 victims and arrested 28 defendants. Some of the convictions are highlighted below:

- Jose Juarez Santa Maria (aka Sniper): Life in Prison
- Alexander Rivas (aka Casper 1): 120 Months in Prison
- Alonso Bruno Cornejo (aka Casper 2): 292 Months in Prison
- Henry Herrera (aka Lunatico): 300 Months in Prison
- Rances Ulices Amaya (aka Murder): 600 Months in Prison
- Yimmy Pineda Penado (aka Critico): 210 Months in Prison
- Jonathan Adonay Fuentes (aka Crazy Boy): 120 Months in Prison

These successful prosecutions dealt a serious blow to local MS-13 leadership and sent a strong message that the collective law enforcement community in Northern Virginia would deal with gang activity and sex trafficking swiftly and harshly.

## **Conclusion**

The cases that I have highlighted today are indicative of the impact that transnational crime can have in our local communities. In my opinion, it is imperative that Congress continues to work with our federal law enforcement leaders to remain focused on combating transnational crime.

Thank you again for the opportunity to appear before you today. I am available to work with this Committee to help minimize the impact of transnational crime through its oversight responsibilities. I am pleased to answer any questions you may have at this time.



Statement of

Elizabeth Kempshall  
Executive Director  
Arizona Region of the Southwest Border  
High Intensity Drug Trafficking Area  
(Arizona HIDTA)

Before the U.S. Senate Committee on  
Homeland Security and Governmental Affairs  
“Securing the Border: Assessing the Impact of Transnational Crime”  
March 24, 2015

Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee:

It is my privilege to address you today on behalf of the Arizona High Intensity Drug Trafficking Area’s (HIDTA) Executive Board concerning the current drug threats in Arizona and how these threats affect the rest of the country.

The Arizona HIDTA region is approximately 64,443 square miles and includes 372 miles of contiguous international border with Sonora, Mexico. The international border area consists of inhospitable desert valleys and rugged mountainous terrain, which are ideal for drug smuggling. The Arizona/Sonora corridor is comprised of six international land ports of entry (POEs) situated in Nogales (Mariposa and DeConcini), Naco, Douglas, Sasabe, Lukeville, and San Luis.

The Arizona HIDTA is comprised of nine counties that encompass the Phoenix and Tucson metropolitan areas, with a combined population of approximately 6,082,367 residents. Of the 21 Native American Reservations in Arizona, 17 are in the Arizona HIDTA region.

Six main interstate highways run through Arizona and connect Arizona to California, New Mexico, Nevada, Colorado, and/or Utah: I-8, I-10, I-15, I-17, I-19, and I-40. Due to Arizona’s geographical location and shared border with Mexico, all highways and roadways are exploited by Mexican drug trafficking organizations (DTOs) to transport large quantities of illicit drugs.

On an annual basis, the Arizona HIDTA Investigative Support Center's Threat Production Unit conducts a comprehensive intelligence study to identify the new and continuing trends in the Arizona region. The purpose of the yearly Threat Assessment is to provide strategic intelligence to the Arizona HIDTA and its partners to assist in the development of drug enforcement strategies.

The Threat Assessment found that the Sinaloa Cartel presents the primary operational threat to Arizona, possessing vast resources to source, distribute, transport, and smuggle large amounts of cocaine, marijuana, heroin, and methamphetamine in and through Arizona. The Sinaloa Cartel and affiliated Mexican DTOs exploit well-established routes and perfected smuggling methods to supply drug distribution networks based in Arizona cities, which in turn supply drug networks throughout the United States. The Mexican State of Sonora is home to key drug trafficking plazas controlled by the Sinaloa Cartel. The plazas are used for the staging of drugs, money, and weapons. Smuggling organizations, based on both sides of the Arizona/Mexico border, are hired to smuggle drugs through or between the Arizona POEs.

Arizona HIDTA investigations reveal several operational components to the drug business as it relates to Arizona. First, drugs are smuggled from Mexico into Arizona through the POEs, or between the POEs, through remote desert areas; then drugs are either transported directly to stash houses in Tucson or Phoenix or temporarily staged on the Arizona side of the border before landing in Tucson or Phoenix stash houses. Because Arizona is essential to the Sinaloa Cartel, law enforcement operations that successfully disrupt and/or dismantle Arizona-based drug organizations directly impact other U.S. drug markets, i.e., drug availability, price and purity, methods of operation, and shifting trends.

The metropolitan and surrounding areas of Phoenix and Tucson are command and control hubs for far-reaching Mexican drug distribution networks. The distribution networks supply ton quantities of marijuana, methamphetamine, cocaine, and heroin to large-scale customers located in Northwest, Midwest, Southeast, and East Coast cities. The Arizona Threat Assessment found that according to the El Paso Intelligence Center (EPIC) National Seizure System (NSS), from FY 2012 through FY 2014, 451 drug seizures occurred outside of Arizona but had a documented Arizona nexus. Specific to the 451 drug seizures, 315 seizures resulted in the seizure of 10,223 kilograms of marijuana; 74 seizures resulted in

the seizure of 202 kilograms of methamphetamine; 42 seizures resulted in the seizure of 141 kilograms of cocaine; and 20 seizures resulted in the seizure of 37 kilograms of heroin. The sheer volume of seizures with an Arizona nexus, along with investigative data, further confirms how vital Arizona is to Mexican DTOs.

The smuggling organizations that operate along the Arizona/Mexico border deploy an assortment of transportation methods to defeat law enforcement border defenses, such as tractor-trailer trucks and vehicles outfitted with deep hidden compartments; stolen vehicles; all-terrain-vehicles (ATVs); underground tunnels; ultralight aircraft; backpackers; and scouts and spotters to assist backpackers hiking through the desert.

Privately-owned automobiles and tractor-trailer trucks with hidden compartments are used prevalently for POE smuggling operations. POE seizures reveal the use of gas tanks, quarter panel door panels, and other natural voids in vehicles. Some of the more sophisticated concealment methods involve false oil pans, gas tanks, fire wall compartments, engine manifold areas, drive shafts, transmissions, and compartments built into the vehicle frame. Just recently, nearly 13,000 pounds of marijuana were seized from a Mexican national driving a tractor-trailer through the Nogales POE. The marijuana was inside boxes commingled with mechanical components. Another example is from an Arizona HIDTA long-term investigation that culminated in April 2013 and resulted in an Arizona record seizure of 137 pounds of methamphetamine; 107 pounds of heroin; and \$50,000, concealed in 140 PVC pipes in rear axles of nine semi-tractor trailers. The targeted smuggling organization utilized a specific method whereby semi-tractor-trailer trucks, already loaded with drugs concealed in PVC pipes, were driven from Nogales, Sonora, Mexico, through the Nogales POE by Mexican drivers to truck yards in Nogales, Arizona. At the Nogales, Arizona truck yards, U.S.-based drivers would take control and drive these same trailers, still loaded with drugs concealed in PVC pipes, to Phoenix or Los Angeles, for further transport to Atlanta, Georgia.

Arizona drug smuggling groups use pedestrian body carriers and oftentimes exploit children and their families to transport illicit drugs through the POEs. HIDTA investigations reveal ties between body carriers who crossed the border as pedestrians, then boarded commercial shuttles or buses destined for Tucson and/or Phoenix, Arizona. In addition to adult pedestrians carrying drugs through

the POEs, the Arizona HIDTA Threat Assessment reports the use of car seats, strollers, and the body area of infants and young children to conceal marijuana, cocaine, heroin, and methamphetamine. The organizations use grade school, middle school, and high school students. These methods are perceived by the smuggling organizations to be less likely identified by law enforcement.

Transportation and smuggling activities between the POEs in inhospitable desert valleys separated by rugged mountainous terrain are equally important and ideal for drug smuggling. Mexican smuggling groups often use backpackers, ATVs, and vehicles equipped to traverse washes, valleys, and pipeline roads, thus avoiding law enforcement checkpoints and smuggling sensors. An extensive system of scouts armed with radios, solar-powered radio repeaters, cellular phones, and weapons situated on high points along drug trafficking routes are vital to the smuggling groups. Located in strategic positions in Mexico and as far as 75 miles into Arizona, scouts protect drug loads from law enforcement and rip-crews and re-direct backpackers and vehicles to avoid law enforcement operations. The scout networks rely on sophisticated two-way radios and cellular phones for communication. Radios have complex, digital encryption technology, thus making it more difficult for law enforcement to detect and decode the frequencies used during smuggling operations. The remote activation and GPS capabilities of these radios allow for "smuggling supervisors" to monitor the progress and security of smuggling groups. Scouts also use high-powered optical devices and technical surveillance methods to observe law enforcement and coordinate smuggling operations along the border and through the desert valleys. The scouting network allows for the organization to have a continuous view of law enforcement presence on both sides of the border, making it easier to direct loads around any law enforcement presence. The scout's role is fundamental to the drug organization's success in supplying drugs to U.S. cities.

Tribal land located along the Arizona/Mexico border is a key smuggling corridor for illicit drugs. The territory of the Tohono O'odham Nation consumes approximately 71 miles, 19% of the Arizona/Mexico border. Tribal lands are used to stash large quantities of drugs prior to delivery to Arizona distribution networks and subsequently to U.S. drug markets. Specifically, the Tohono O'odham Indian Reservation, which straddles the Mexico/Arizona border, is exploited by the smuggling groups. Tribal members with family ties to Mexican drug organizations are used to facilitate drug movement, transport illicit drugs to

Phoenix and Tucson stash houses, and recruit other tribal members to support trafficking activities. Support activities include providing temporary stash locations and delivering food and water to backpackers. Arizona HIDTA investigative reporting indicates illicit drugs moved through the Nation are transported on Federal Routes 1, 34, 15, 21, and 19.

Vehicle incursions are employed as a method to move illicit drugs through Arizona border areas. Sometimes vehicle incursions are assisted by crews, brush clearers, and fence cutters. Additionally, cranes and ramps have been observed along the border. Most importantly, vehicle incursions present a potential threat to law enforcement because drivers are often aggressive and drive at high rates of speed to avoid detection.

Marijuana is regarded as the greatest drug threat to the Arizona HIDTA region. It remains a cash crop for Mexican drug trafficking organizations. The Arizona/Sonora corridor is the most significant marijuana trafficking route for both the Sinaloa Cartel and large-scale, Sonora-based DTOs. The majority of the marijuana smuggled into Arizona is destined for other parts of the U.S. According to the EPIC NSS, despite a 27% decrease in Arizona marijuana seizures, from 608,075 kilograms seized in Calendar Year (CY) 2012 to 445,871 kilograms in CY 2014, Arizona still accounts for 39% of all marijuana seized in the Southwest Border states. As recently as February 2015, an Arizona HIDTA investigation resulted in the seizure of 4,700 pounds of marijuana in Bisbee, Arizona, which led to the discovery of a tunnel at a residence in Naco, Arizona.

Methamphetamine is supplied to Phoenix and Tucson distribution networks by the Sinaloa Cartel and other Mexican-based sources at unprecedented levels. According to the Arizona HIDTA Threat Assessment, it is the second greatest drug threat in the Arizona HIDTA region. The EPIC NSS shows Arizona methamphetamine seizures increased from 1,877 kilograms in CY 2012 to 2,523 kilograms in CY 2014, a 34% increase. Arizona HIDTA methamphetamine seizures show similar trends, increasing 30% from 685 kilograms seized in CY 2012 to 890 kilograms in CY 2014. The overwhelming availability of methamphetamine is confirmed by the prices, which have been on the downturn for the past five years, from approximately \$8,000 per pound to \$3,000 per pound. Methamphetamine in solution is an emerging trend facing Arizona law enforcement. The Arizona HIDTA Threat Assessment found that methamphetamine in solution seizures have

increased in Arizona. Methamphetamine in solution is concealed in the gas tank and windshield wiper fluid reservoir areas of transportation vehicles and in tequila bottles, beer bottles, and soda bottles. The abundance of methamphetamine in Arizona is directly correlated to increased methamphetamine production in Mexico by the Sinaloa Cartel and other Mexican DTOs.

Most often, the drug trafficking trends occurring within the Arizona HIDTA region set the trends for other United States regions. For example, the June 2014 Arizona HIDTA Threat Assessment Heroin Study reported that circa 2007, Mexican “white” heroin first surfaced in Arizona, and investigations increasingly showed direct connections between Mexico-based sources and wholesale heroin buyers in East Coast, Midwest, and Northwest cities. In 2009, Federal, state, and local law enforcement entities began to observe an increase in the amount of heroin seized in Arizona. The number of Arizona HIDTA investigations whereby heroin exhibits were seized increased 36% from 140 in CY 2013 to 190 in CY 2014. EPIC NSS shows Arizona heroin seizures increased from 486 in CY 2013 to 507 in CY 2014; however, looking further back, approximately 180 kilograms of heroin were seized in 2010, showing an astounding 181% increase from CY 2010 to CY 2014.

Seizing the opportunity to profit from the growing appetite for heroin pursuant to the prescription drug epidemic, the Sinaloa Cartel and other Mexican DTOs adapted to meet the growing heroin demand by producing, smuggling, transporting, and distributing wholesale quantities of Mexican white, brown powder, and black tar heroin to the expanding Northeast, Midwest, and Northwest heroin markets through Arizona-based trafficking networks. The Arizona HIDTA Heroin Study shows from CY 2012 through June 2014, approximately 163 heroin seizures totaling 575 kilograms occurred outside of Arizona but linked to distribution networks operating in Arizona. In June 2014, an Arizona HIDTA investigation into a Mexico heroin organization resulted in the seizure of 89 pounds of white heroin. The investigation revealed the Tucson-based Mexican distribution cell was supplying multi-pound quantities of heroin to Las Vegas, Nevada, Denver, Colorado, and Portland, Oregon.

The Arizona HIDTA is uniquely qualified to combat the immense drug trafficking threat facing Arizona, for this threat is too big for one single agency. Intelligence is an integral component of the infrastructure of the Arizona HIDTA Program.

Through the systematic collection, analysis, and dissemination of secure, accurate, and timely intelligence, there is increased inter-agency communication, coordination, and deconfliction, which heightens officer safety, eliminates duplication of effort, and enhances investigations. Coordination through shared intelligence is critical to combating the tremendous threat posed by the Sinaloa Cartel and Mexican drug trafficking organizations. The Arizona HIDTA philosophy of cooperation and coordination is based upon enhanced information and resource sharing through co-located and/or collaborative Task Force Initiatives strategically stationed throughout the region. Under the coordination umbrella of the Arizona HIDTA, the participating law enforcement agencies eliminate duplicative operational and investigative programs and facilitate tactical, operational, and strategic intelligence sharing. The extent of inter-agency cooperation supported by the Arizona HIDTA illustrates that all Initiatives are working investigations in an efficient and effective manner. The Arizona HIDTA approach demonstrates that when traditional organizational barriers are overcome, Federal, state, local, and tribal law enforcement entities can better focus investigative and intelligence resources in dismantling and disrupting the most dangerous and prolific drug trafficking organizations.

Thank you for the opportunity to appear before you and for the Subcommittee's continued support of the HIDTA Program. The Arizona HIDTA remains committed to facilitating cooperation among Federal, state, local, and tribal law enforcement through the sharing of intelligence and to supporting coordinated law enforcement efforts.

I will be glad to address any questions you may have at this time.

**Tuesday, March 24, 2015, at 10:00 a.m., Senate Homeland Security and Governmental Affairs Committee**

Testimony for the hearing on **the Border: Assessing the Impact of Transnational Crime**

Chairman Johnson, Ranking Member Carper, and Members of the Committee, good morning and thank you for your invitation for me to speak to you today on this very important issue.

My name is Benny Martinez. I'm the chief deputy sheriff of Brooks County in South Texas. The Brooks County sheriff's department, with five deputies and the sheriff, is responsible for maintaining law and order within a rural region of 943 square miles that encompasses the county seat of Falfurrias. Outside of the city of Falfurrias, the county consists primarily of privately owned ranchland. The sandy terrain is mostly vegetated with mesquite trees, scrub oaks, and prickly pear cactus. The county's total population is about 8,500.

Brooks County has a U.S. Border Patrol checkpoint, known as the Falfurrias checkpoint that is approximately 70 miles north of the U.S/Mexico border on U.S. Highway 281. U.S. Highway 281 is a major north/south artery from the Rio Grande Valley area that leads to Houston, San Antonio, Austin and Dallas and other destinations throughout the interior of the United States.

Highway 281 is part of the Gulf Coast corridor, which is one of the most active drug and human smuggling corridors in the United States. The Falfurrias checkpoint was the busiest checkpoint in the country in regards to undocumented crosser apprehensions (until the surge of unaccompanied minors last summer) and narcotic seizures. The current checkpoint facility will soon be replaced by a new one that will increase the number of inspection lanes from three to eight.

Because of Brooks County's geographical location and the Border Patrol checkpoint, it has its own very unique challenges. In most cases, smugglers/coyotes drop off undocumented crossers and drug smuggling backpackers on the south side of the Falfurrias checkpoint. They are led by the smugglers and made to walk east and west of Highway 281, moving north through private ranch lands, to then get picked up on Texas Highway 285 by other smugglers who will then transport them on the Gulf Coast corridor to cities north. In other cases local gang members or others seeking monetary gain, who live in the county, drive their human and drug loads through private property by having access to keys to locked property gates.

The sad reality is that many of those who are being led through the brush by the smugglers do not survive their demanding journey. In the past six and a half years, the county has recovered 443 bodies of undocumented crossers. We estimate that we recover less than half of all those who perish. From 2008 to 2014 the Brooks County has spent almost \$700,000 for body recoveries.

The Mexican cartels and the transnational and statewide gangs continue to increase the level of organized criminal activity in the Rio Grande Valley and throughout the state. We, who live in and near border communities where cartel drug and human smuggling operations are prevalent, face additional public safety issues such as home invasions; felony vehicle evasions; pseudo police stops; extortion, kidnappings, sexual



assaults of illegal aliens, and the recruitment of Texas children to transport drugs, people, and stolen vehicles across the border. The gangs and cartels have been responsible for shootings at law enforcement officers patrolling the Rio Grande River and they've contributed to the deaths of undocumented crossers on Texas ranches and farms.

Violent transnational gangs such as MS-13 gang members are in Texas and elsewhere. MS-13 was recently linked in two separate murders of school-age children in the Houston area, one of which was ordered from El Salvador. Nearly all of the subjects had illegally crossed into the United States at the Texas border.

Since 2011, the number of MS-13 members encountered by U. S. Border Patrol in the Rio Grande Valley sector has increased each year, accelerating in 2014. This coincides with increased illegal migration from Central America during the same time period. In Fiscal Year 2014, MS-13 represented 43 percent of all gang encounters within the Rio Grande Valley sector, and approximately 11 percent of MS-13 members encountered were juveniles. In addition, there are at least three major Mexican/American gangs that are known to be active in our communities and throughout Texas, if not the country.

There was one particular case that affected me and one of my deputies personally. You will note the unsealed indictment that is included with my written testimony. In this case a smuggler from Falfurrias with a history of smuggling marijuana north and bringing cash back south, stated to an informant that two Zeta members were upset that they lost a load of 1100 lbs. of marijuana in December of 2010 because of Brooks County law enforcement. They heard that Benny Martinez was in charge of law enforcement in the county and the Zeta members wanted to know where Benny and one of his deputies lived so that they could make Benny "talk".

Also of great concern to Brooks County is the known apprehension of undocumented crossers from special interest countries with confirmed ties to terrorist groups.

I would like to emphasize that Brooks County law enforcement has a very close working relationship with state and federal law enforcement partners. Without their help, I can't imagine how we would have fared. The Texas Lieutenant Governor's office stepped up to the plate two years ago when no one else would and directed \$150,000 to the county to help with our depleted budget.

I would also like to recognize those who have come to Brooks County's aid and to the aid of the family members of the 443 deceased victims found in the county. Dr. Kate Bradley, from Texas State University; Dr. Lori Baker, from Baylor University; Dr. Krista Latham, from Indianapolis University; and Dr. Harrell Gill-King, from North Texas State University have all helped in identifying the victims so that their families could be notified.

In closing, while we are faced with many difficult security challenges, we also have to remind ourselves that South Texas is the epicenter of legitimate trade and travel for the country. Therefore, it is incumbent upon local, state and federal law enforcement agencies to ensure our communities remain safe -- and with the help of this committee -- I am confident the safety, economic vitality and prosperity of our region will continue to prevail.

Again, Mr. Chairman, Ranking Member and Committee Members, thank you for the opportunity to share Brooks County's challenges and those of the nation's concerning the dangerous affliction of transnational crime. I would be pleased to answer any questions that you may have.

Closing statement:

Until the United States is serious about securing the border, the transnational criminal organizations will continue to operate on the border, within small rural communities, and throughout all major cities of this nation. I hope and pray that this committee will recommend strong measures be taken and acted upon to do just that. I also hope that you would seriously consider recommending that Brooks County be added to the existing list of border counties because of the overwhelming financial burden it receives due to its geographical location.

**SEALED**Clk., U.S. District Court  
Southern District of Texas  
FILED

JAN 10 2011

A091 (Rev. 8/01) Criminal Complaint

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS**

David J. Bradley, Clerk of Court

UNITED STATES OF AMERICA

V.

Jose Maria CARBAJAL Jr.

**CRIMINAL COMPLAINT**Case Number: *C-11-38m*

I, the undersigned complainant state that the following is true and correct to the best of my knowledge and belief. On or about 2003 to on or about January, 2011 in Brooks County, in the  
(Date)

Southern District of Texas defendant, Jose Maria CARBAJAL Jr.

knowingly conspired to possess with intent to distribute a Schedule I Controlled Substances; to wit more than 1000 kg of MARIJUANA

in violation of Title 21 United States Code, Section(s) 846  
I further state that I am a(n) Special Agent and that this complaint is based on the  
following facts:  
Official Title

See Attached Affidavit of ICE Special Agent Larry Gamboa

Continued on the attached sheet and made a part of this complaint:

☒ Yes ☐ No

*[Signature]*  
Signature of Complainant

Larry Gamboa  
Printed Name of Complainant

Sworn to before me and signed in my presence and probable cause found on,

January 10, 2011  
Date

at

Corpus Christi, Texas  
City and State

B. Janice Ellington U.S. Magistrate Judge  
Name and Title of Judicial Officer

*[Signature]*  
Signature of Judicial Officer

## AFFIDAVIT

A. On September 30, 2008, Border Patrol Agents encountered three individuals transporting approximately 275.5 kilograms (kg) of marijuana on a John Deere Gator (an all-terrain vehicle) through ranches south of Falfurrias, Texas. Border Patrol Agents apprehended Ernesto Hernandez but were unable to apprehend his two passengers. Homeland Security Investigations (hereinafter HSI) identified Gary Villalta and Emerson Lopez as the two individuals who accompanied Hernandez on the day of the Border Patrol encounter. HSI Special Agents interviewed Villalta and Lopez who both confessed to aiding Hernandez transport the marijuana through ranches south of Falfurrias, Texas.

On November 7, 2008, HSI Agents received phone call recordings from calls made by Ernesto Hernandez while he was detained at the Brooks County Detention Center. He was apprehended during the September 30 event referenced above. Conversations were recorded between Hernandez and an individual using telephone number [REDACTED]. This number was found in the directory of the phone seized from Hernandez during his arrest under the name "CARBAJAL". Jose Maria CARBAJAL Jr. is also known as JR. From listening to the recordings, your affiant recognizes the voice of Jose Maria CARBAJAL Jr. Information about four of the Brooks county recordings follows.

Recording One. On October 21, 2008, at approximately 12:26 pm Hernandez called [REDACTED] and spoke to Jose Maria Carbajal Jr (hereinafter referred to as CARBAJAL). Hernandez asked CARBAJAL if the "Cuates" explained to him what happened. CARBAJAL told Hernandez he was informed by the "Cuates" and knows what happened. Hernandez explained to CARBAJAL they were ambushed as CARBAJAL is exclaiming, "I know, I know." Hernandez explains that he wants a motion

to discover to find out if law enforcement had information on them. CARBAJAL told Hernandez an individual by the name of "Jerry" will be sending him money. The Cuates have been identified as Gary Villalta and Emerson Lopez, Hernandez's co-conspirators.

Recording Two. On October 23, 2008, at 15:07 hrs, Hernandez called CARBAJAL to inform CARBAJAL the attorney stopped by the jail. Hernandez is explaining to CARBAJAL what is going on in his court proceedings. Hernandez exclaims to CARBAJAL, "Fuck these mother fuckers. They can't break these green berets." CARBAJAL told Hernandez that Jerry was going to send him \$100. Hernandez explained the court proceedings to CARBAJAL.

Phone tolls obtained for phone number [REDACTED] show a phone call made to [REDACTED] the State Bar of Texas listed phone number for Attorney Jose Luis Ramos, on October 23, 2008. Court records show that on October 24, 2008, Attorney Jose Luis Ramos filed a motion to substitute for the Federal Public Defender in Hernandez's pending criminal case, No. 2:08-cr-00714. Hernandez eventually pled guilty and was sentenced to 92 months in BOP on February 12, 2009.

Recording Three. On October 29, 2008, at 8:15 hrs, Hernandez called CARBAJAL to update him on the status of the case. CARBAJAL informed Hernandez he spoke with Hernandez's attorney and was informed of the situation. CARBAJAL reported that he told the attorney to get through the proceeding as fast as he can before Hernandez is charged with something else. Hernandez was then informed his "Little Brothers" had been arrested. According to CARBAJAL, one was arrested for a crime against a young girl and the other was arrested for being in the house. Someone contacted CARBAJAL to inform him the "little brothers" house was being raided. CARBAJAL went on to explain

that Hernandez should be seeing them in jail soon, but it was better if Hernandez would not recognize anybody.

In the same phone call, CARBAJAL asks Hernandez if he has received any money for his commissary account. Hernandez stated he only received money from Edward. (Your affiant has confirmed this deposit to Hernandez' Brooks County Commissary fund). CARBAJAL stated Edward deposited the money because CARBAJAL asked him to do it. He also told Hernandez he would deposit the \$100 Jerry was supposed to deposit. CARBAJAL told Hernandez to call him collect at [REDACTED] whenever Hernandez needed to call his house. This number is the phone for CARBAJAL'S house. Law enforcement database records checks conducted revealed [REDACTED] belonged to a Julie Carbajal. Subscriber information also showed [REDACTED] to be registered to [REDACTED] Falfurrias, Texas, the mailing address for Jose Maria CARBAJAL, Jr.

Recording 4. On November 5, 2008, at 10:48 hrs, Hernandez called CARBAJAL to inform CARBAJAL he saw "Los Cuates" in the jail next to him. Hernandez said one of them paid the fine but they were going to get deported. CARBAJAL stated he was informed by the girlfriend of one of the guys. Hernandez also asked CARBAJAL if Jerry sent the money he was supposed to send. CARBAJAL said Jerry told him Marissa sent the money. Hernandez stated he had not received any money from Marissa.

Hernandez went on to explain he could possibly be sentenced to at least 5 years because of his record. The only thing which could help him is if he cooperates. Hernandez told CARBAJAL he would not cooperate with the government. CARBAJAL tells him it's not worth it for a two year reduction in sentence. Hernandez explained to

CARBAJAL that law enforcement wanted to know the identity of the two individuals who escaped because law enforcement saw three individuals the night of Hernandez's arrest. Hernandez reported to CARBAJAL he told his attorney he did not know the other two individuals who were with him that night. CARBAJAL responded to Hernandez by saying "oh si". Hernandez also explained to CARBAJAL how he was blinded when he was shined with "el candil" (flashlight) while wearing "los gafas" (referring to the night vision goggles). CARBAJAL replied, "oh yeah".

B. On November 30, 2008, Emerson Lopez, a co-conspirator of Hernandez and Villalta, escaped from Brooks County Detention Center. Texas Department of Criminal Justice tracking dogs tracked Lopez's scent from the Brooks County Jail to the residence of Jose Maria CARBAJAL Jr. located one quarter of a mile west of the county jail. On December 1, 2008, HSI Agents and U.S. Marshal's Service Deputies responded to the residence of Jose Maria CARBAJAL Jr. in order to question the residents about Lopez's escape. Jose Maria CARBAJAL Jr. and Falescha CARBAJAL were identified as the only two individuals of income earning age living at their residence. Jose Maria CARBAJAL Jr. informed agents he made a living by working as a ranch hand in various ranches around the Falfurrias, Texas area. Falescha CARBAJAL informed agents she made a living as an interior decorator. The home Jose and Falescha CARBAJAL lived in is registered under the name of Falescha CARBAJAL and is appraised at \$177,983 by the Brooks County Tax assessor's office.

C. On October 23, 2009, Jose Figueroa, Carbajal's brother-in-law, and Edward Xavier Munoz, both residents of Falfurrias, Texas, were arrested for transporting approximately

\$72,256. According to the report, Arkansas State Police Cpl. Dennis Overton conducted a traffic stop on Figueroa and Munoz for speeding. Figueroa was driving a white 2003 Dodge Intrepid (TX: BD8S321) and Munoz was the passenger. Records checks conducted on the vehicle (TX: BD8S321) revealed a registered owner of Clarissa Renee Sanchez, [REDACTED], Falfurrias, Texas.

After being granted consent, Cpl. Overton discovered \$66,695 cash inside a spare tire hidden in the trunk of the vehicle. A further search of the vehicle revealed numerous receipts indicating the two had travelled to Frankfurt, Kentucky. A search of Figueroa's person revealed additional cash. A total of \$72,256 was seized from Figueroa and Munoz. DEA Agents were contacted and responded. During their interviews Figueroa and Munoz claimed no knowledge of the money and signed an abandonment form.

Agents also identified a cell phone, [REDACTED] which Figueroa had in his possession. Records checks conducted on this cell phone revealed a connection to the CARBAJAL drug trafficking organization. This cell phone was determined to be subscribed to a Melinda Figueroa. Other phone numbers belonging to Figueroa have also been linked to several marijuana seizures in this investigation.

D. On Monday August 9, 2010, Brooks County Sheriff's arrested Cooperating Defendant One who was smuggling approximately 168 kg of marijuana in a black Ford F-150 registered under his name. HSI S/A Larry Gamboa was contacted by Border Patrol Intel Agent Ernest Reyna and informed of the arrest of Cooperating Defendant One.

On October 20, 2010, S/A Larry Gamboa and S/A Rodney Breese met with Cooperating Defendant One and his attorney. Cooperating Defendant One informed agents he was hired by CARBAJAL to drive the August 9, 2010 load of marijuana.



According to Cooperating Defendant One, the marijuana he was caught with was brought to a ranch in the Tacubaya/Encino, Texas area a few weeks prior to being smuggled north. After the marijuana arrived at the ranch, CARBAJAL and Cooperating Defendant One drove to the ranch where CARBAJAL checked to see if all the bundles were accounted for.

According to Cooperating Defendant One, CARBAJAL was paid \$25,000 to smuggle this load of marijuana. CARBAJAL and Cooperating Defendant One returned to Falfurrias after checking on the load. Cooperating Defendant One claimed the marijuana was stored at the ranch for a few weeks while CARBAJAL was in Arkansas taking care of some business. CARBAJAL returned from Arkansas and had the marijuana transported the marijuana north to a ranch on Creek Road north of the Falfurrias Border Patrol Checkpoint.

On the day of his arrest, Cooperating Defendant One found out CARBAJAL had returned from his trip to Arkansas and the marijuana was already north of the checkpoint. Cooperating Defendant One called CARBAJAL and CARBAJAL instructed Cooperating Defendant One to go to CARBAJAL'S house. Cooperating Defendant One met with CARBAJAL at CARBAJAL'S house where CARBAJAL instructed Cooperating Defendant One to drive to the ranch where the marijuana was being stored, load the marijuana, and transport it to another individual's house.

Agents then questioned Cooperating Defendant One about individuals who work for CARBAJAL. Cooperating Defendant One stated Andy Castillo works for CARBAJAL. Castillo assists in the transportation of drugs through ranches. Cooperating Defendant One stated Castillo has been working for CARBAJAL dating back to 2003

when Castillo was arrested after transporting marijuana on ATV'S with several other individuals. Cooperating Defendant One also identified Ernesto Hernandez as an individual who used to work for CARBAJAL transporting marijuana through ranches. (See paragraph A, supra, for information about the law enforcement seizure from Ernesto Hernandez and his subsequent recorded jail conversations with CARBAJAL).

According to Cooperating Defendant One, CARBAJAL sells and distributes large quantities of marijuana in the Arkansas area where CARBAJAL has numerous contacts to include CARBAJAL'S brother in law, Jose Figueroa. Jose Figueroa was identified by Cooperating Defendant One as someone else who works for CARBAJAL. Figueroa's main responsibility, according to Cooperating Defendant One, is to transport money for CARBAJAL. (Refer to paragraph C, supra, for information about a law enforcement money seizure from Figueroa when he was returning from Arkansas).

Agents questioned Cooperating Defendant One about any loads of drugs or money which have been caught by Law Enforcement which belonged to CARBAJAL. Cooperating Defendant One was also asked about anyone who has been arrested while smuggling drugs for CARBAJAL. Cooperating Defendant One identified a load of marijuana for which Andy Castillo, Louie Trevino, and J.J. Ruiz were arrested for in 2003. Cooperating Defendant One explained Castillo and Ruiz were working for CARBAJAL transporting marijuana on All Terrain Vehicles through ranches south of Falfurrias, Texas. He further said that on the night Castillo, Ruiz, and Trevino were arrested they were smuggling the marijuana load for CARBAJAL and another individual.

Cooperating Defendant One informed Agents that Andy Castillo was recently arrested again near Hebbronville, Texas for helping smuggle a large amount of

marijuana. According to Cooperating Defendant One, Castillo was driving out to meet the people bringing the load of marijuana north. Castillo was supposed to drive the trailer through the ranches. Cooperating Defendant One stated this particular load of marijuana was supposed to be smuggled through the Los Cuates Ranch near FM 1017 south of Hebbronville, Texas. Cooperating Defendant One knows Castillo and the individuals he was arrested with were released. According to Cooperating Defendant One, CARBAJAL was hesitant to work with the other individuals who were involved with this particular load. (Your affiant has reviewed PACER records for Laredo United States District Court Case No. 10-683 and corroborated the arrest of Castillo for this offense and subsequent dismissal of the case).

Cooperating Defendant One also identified the money which Jose Figueroa was caught with in 2009 as belonging to CARBAJAL. Cooperating Defendant One stated he was supposed to receive a portion of this money as payment from CARBAJAL for work Cooperating Defendant One did for CARBAJAL. When the money was seized CARBAJAL informed Cooperating Defendant One he could not pay Cooperating Defendant One because the money had been caught. Cooperating Defendant One believes Figueroa was caught with about \$60,000.

Bank records obtained in this investigation show that CARBAJAL's wife, Falescha, deposited a cashier's check for \$250,000 from Ysidro Garcia in March, 2008. According to Cooperating Defendant One, CARBAJAL stated that he used Ysidro Garcia to help him launder drug proceeds. CARBAJAL said that he sold a piece of property to Ysidro Garcia to help launder CARBAJAL'S money. Tax records for Brooks County indicate a piece of property identified as Property ID# 5214 was owned by Falescha

CARBAJAL in 2007. In 2008 Brooks County lists the piece of property ID # 5214 as belonging to [REDACTED], Custodian for Garcia Children, [REDACTED] Falfurrias, Texas [REDACTED]. According to ATF, Debra Ann Larraga is the common-law wife of Ysidro Garcia. In fact, they were arrested together and charged with weapons violations in Cause No. 2:09-CR-556. The case against Larraga was dismissed.

Cooperating Defendant One also stated that CARBAJAL said that Ysidro Garcia gave CARBAJAL a large sum of money in the spring of 2008. Cooperating Defendant One stated CARBAJAL said that Ysidro Garcia paid him approximately \$200,000, as repayment for several loans which CARBAJAL had made to Garcia. This was corroborated by the cashier's check noted above.

Cooperating Defendant One states he has knowledge of these facts due to working as a member of this organization for numerous years and through conversations he has had with Jose Maria CARBAJAL Jr. Cooperating Defendant One was shown an array of six photos and positively identified Jose Maria CARBAJAL Jr. as the individual who hired him to smuggle the marijuana.

Cooperating Defendant One is cooperating in return for lenient treatment from the government in connection with his prosecution for the marijuana seizure which occurred on August 9, 2010. Cooperating Defendant One has multiple felony convictions, however, your affiant has found his information with respect to this investigation to be credible and corroborated by independent means.

E. On August 11, 2010, an interview was conducted with Cooperating Defendant Two, who admitted to working for Jose Maria CARBAJAL'S drug smuggling organization. Cooperating Defendant Two admitted to allowing his ranch to be utilized by CARBAJAL to store drugs which were smuggled around the checkpoint. Cooperating Defendant Two stated he was approached by Jose Maria CARBAJAL Jr. approximately five years ago to allow them to store marijuana on his ranch. CARBAJAL offered Cooperating Defendant Two \$1000 for every load of marijuana which was smuggled through Cooperating Defendant Two's property. CARBAJAL called Cooperating Defendant Two once a month, sometimes twice a month, to smuggle marijuana over the past five years. Cooperating Defendant Two would receive approximately \$1000 cash from CARBAJAL for marijuana loads run through his ranch.

Agents asked Cooperating Defendant Two if he knew of any drug loads, belonging to CARBAJAL, which had been caught by law enforcement. Cooperating Defendant Two informed agents about an individual he knew as "ERNEST" who was caught by Border Patrol transporting marijuana through ranches on a John Deere Gator (an all terrain vehicle), approximately two years ago. CARBAJAL stored this particular Gator at Cooperating Defendant Two's ranch prior to it being seized. Cooperating Defendant Two stated he knew CARBAJAL was using this Gator to transport marijuana through the ranches. The marijuana, which was seized along with the Gator, was supposed to arrive at Cooperating Defendant Two's ranch to be stored overnight. (See paragraph A, *supra*, for more information about the seizure of marijuana from Ernest Hernandez).

Cooperating Defendant Two also recalls two illegal aliens staying at the ranch around the time the Gator was seized. Cooperating Defendant Two described these two aliens as

young Hispanic men. CARBAJAL would utilize these two illegal aliens to transport marijuana through the brush, guard the marijuana overnight, or act as lookouts in the brush to spot law enforcement.

Cooperating Defendant Two also informed agents the load of marijuana which Brooks County officers seized on August 9, 2010 from Cooperating Defendant One, was stored at the ranch and belonged to Jose Maria CARBAJAL Jr. Cooperating Defendant Two said that on Sunday, August 8, 2010, Cooperating Defendant Two's son received a call from an individual who works for CARBAJAL telling him they would be at the ranch hunting hogs the next day. Cooperating Defendant Two related that this meant they would be running a load of marijuana at the ranch. After the seizure, CARBAJAL informed Cooperating Defendant Two the load of marijuana had been seized by law enforcement.

Cooperating Defendant Two positively identified Jose Maria CARBAJAL Jr. out of an array of six photos. CARBAJAL was identified by Cooperating Defendant Two as the leader of the organization. Cooperating Defendant Two agreed to cooperate with law enforcement in lieu of prosecution. Cooperating Defendant Two has not been formally charged in any jurisdiction with offenses related to these events. Affiant believes information provided by Cooperating Defendant Two to be accurate and reliable. Affiant has been able to corroborate statements made by Cooperating Defendant Two, through various investigative methods.

F. On November 3, 2010, Cooperating Defendant Two met with Jose Maria CARBAJAL Jr. at his residence at 137 County Road 201A, Falfurrias, Texas, to talk

about any upcoming loads to be smuggled. When Cooperating Defendant Two arrived, Jose Maria CARBAJAL Jr. walked out of his home with \$1000 cash in hand. CARBAJAL gave the \$1000 cash to Cooperating Defendant Two as payment for a previous load of marijuana. Your affiant has reviewed a recording of this meeting. Your affiant recognizes the voices of Cooperating Defendant Two and CARBAJAL on this recording. Your affiant has initiated forfeiture proceedings on this sum of money.

G. On December 15, 2010, Cooperating Defendant Two met with CARBAJAL at his residence on 137 County Road 201A, Falfurrias, Texas, to discuss any possible upcoming loads. Your affiant has reviewed a recording of this meeting. Your affiant recognizes the voices of Cooperating Defendant Two and CARBAJAL on this recording. The recording of this encounter demonstrates the following facts. When Cooperating Defendant Two arrived, CARBAJAL told him he is putting up a privacy fence made of sheet metal to ensure no one can see into his property.

Cooperating Defendant Two asked CARBAJAL if he had anything going on lately. CARBAJAL told Cooperating Defendant Two they have something going on right now and they've been at it for the last 4 days. CARBAJAL stated he has had people hidden in the corner of Cooperating Defendant Two's ranch scouting the roadways. CARBAJAL informed the Cooperating Defendant Two his workers saw some sort of aircraft while they were scouting in the brush last night. When they saw this aircraft they decided not to run the load. CARBAJAL told the Cooperating Defendant Two he heard Law Enforcement was going to be using airplanes with heat sensors. CARBAJAL claimed they were going to use the "stuff from the military".

CARBAJAL informed Cooperating Defendant Two he has not used Cooperating Defendant Two's place but he may use it to drop off people in the brush to scout the roadways in the upcoming days. CARBAJAL stated they will be coming through this area. CARBAJAL stated they may wait inside the ranch for a little bit but they will keep the load moving. CARBAJAL told the Cooperating Defendant Two he will still get his share of the money.

On December 17, 2010, Cooperating Defendant Two received a phone call (this phone call was not recorded) from CARBAJAL informing Cooperating Defendant Two CARBAJAL was going to place a scout on the ranch to help scout the road ways for law enforcement while someone drove the load of marijuana through. CARBAJAL did not provide a particular time he was going to run the load of marijuana. Cooperating Defendant Two contacted HSI Agents in regards to this information. Agents instructed Cooperating Defendant Two to drive out to the ranch and see if the scouts had arrived. Cooperating Defendant Two arrived at the ranch and spoke with two unidentified Hispanic males (UHM's) who informed Cooperating Defendant Two the marijuana had already been transported north and they were waiting to be picked up.

While at the ranch Cooperating Defendant Two observed a red pickup truck drive up to the UHM'S. The driver instructed the UHM'S to load bundles into the truck and then he drove off. Cooperating Defendant Two contacted Agents and informed them of the pickup truck transporting the marijuana. Agents contacted local officers but were unable to locate the pickup.

On December 18, 2010, at approximately 9:23 a.m., Cooperating Defendant Two met with CARBAJAL at 137 CR 201A regarding the load of marijuana. Your affiant has



reviewed a recording of this meeting. Your affiant recognizes the voices of Cooperating Defendant Two and CARBAJAL on this recording. The recording of this encounter demonstrates the following facts. CARBAJAL informed Cooperating Defendant Two there was still approximately 1400 lbs of marijuana still on the ranch and they needed some one to drive it out. CARBAJAL offered the Cooperating Defendant Two \$12,000 to drive it out of the ranch to a property CARBAJAL owns north of the county jail. CARBAJAL informed Cooperating Defendant Two he will have people set up along Sewer Plant Road and Highline Road in Falfurrias, Texas. CARBAJAL said these people would be looking for narcotic agents on the roadways. Cooperating Defendant Two left CARBAJAL'S and later placed a recorded telephone call to CARBAJAL and informed him he could not transport the marijuana.

At approximately 6:00 pm, Agents received a call from Cooperating Defendant Two stating a beige Chevrolet Silverado Extended Cab pickup truck with a Texas license plate of AN92087 would be one of the vehicles transporting the marijuana out of the ranch. The other vehicle which was going to transport marijuana out of the ranch was described as a dark colored Dodge four door pickup truck with a Texas license plate of 14YWJ8. S/A Jose Pineda and S/A Tim Sturdevant were conducting surveillance of the ranch from across the street. At approximately 6:00 pm, S/A Pineda and S/A Sturdevant observed two pickup trucks matching the description of the load vehicles arrive at the gate to the ranch and drive inside.

At approximately 6:53 p.m., Agents conducting surveillance on the ranch informed agents on the road two pickup trucks matching the description of the load vehicles had left the ranch. At approximately the same time, Cooperating Defendant Two

contacted S/A Gamboa to inform him the trucks were on there way in to Falfurrias via Creek Road. S/A Gamboa observed the beige Chevrolet Silverado as it approached Sewer Plant Road. S/A Gamboa followed the pickup truck as it turned east bound on County Road 405. S/A Gamboa notified Brooks County Deputy Juan Arredondo. Deputy Arredondo clocked the pickup travelling 67 miles per hour in a 35 mile per hour zone. Deputy Arredondo attempted to conduct a traffic stop and the vehicle failed to yield. The vehicle fled until it pulled over on County Road 404 and all its occupants fled. One individual was arrested and 502.6 kg of marijuana were seized from this truck.

DPS Trooper Roberto Montalvo observed the second load vehicle travelling northbound and driving erratically. Trooper Montalvo attempted to catch up to the vehicle in order to investigate but was unable to. Officers later received a call from local residence reporting a vehicle matching the description of the load vehicle being abandoned on the north side of town. Trooper Montalvo responded to investigate and discovered the pickup truck matching the description of the second load vehicle loaded with approximately 171.9 kg of marijuana. The driver was not apprehended. The sum of both loads added up to 674.5 kg of marijuana.

On December 27, 2010, Cooperating Defendant Two met with CARBAJAL regarding the load which was seized by Law Enforcement. Your affiant has reviewed a recording of this meeting. Your affiant recognizes the voices of Cooperating Defendant Two and CARBAJAL on this recording. The recording of this encounter demonstrates the following facts. CARBAJAL informed Cooperating Defendant Two the load was seized by Law Enforcement and one of the illegal aliens was arrested. CARBAJAL stated Brooks County Sheriff's office, DPS, and ICE were waiting for them. CARBAJAL says

they had to have been waiting for them because they caught the illegal aliens.

CARBAJAL stated he is investigating what happened and who provided information to the police. CARBAJAL says the people in charge of the marijuana want to know what happened. CARBAJAL says he had people all over Highline Road and Sewer Plant Road but they did not see the police until it was too late.

CARBAJAL claimed only about 300 lbs of marijuana actually belonged to him. The owners of the other 1100 pounds want to find out what happened. According to CARBAJAL, the owners of the 1100 pounds are members of the ZETA drug cartel and want to get to the bottom of it. CARBAJAL stated he provided information on local law enforcement officers to two members of the ZETAS who came to Brooks County to speak with CARBAJAL. CARBAJAL claimed he showed these individuals where Brooks County Chief Deputy Benny Martinez and Deputy Mo Saavedra lived. CARBAJAL informed these individuals Benny Martinez was in charge in Brooks County and would be the one to capture in order to make him talk about who provided the information. CARBAJAL explained these individuals were interested in taking action against local law enforcement.

H. Your affiant has detailed seizures in this affidavit of more than 1000 kilograms of marijuana from CARBAJAL's organization from 2003 to present. Based on this investigation, however, your affiant believes that CARBAJAL has been in the marijuana smuggling business since at least 2003 and has been involved in much more marijuana than the loads detailed in this affidavit. Cooperating Defendant One and Two state

CARBAJAL is constantly changing his telephone number. CARBAJAL uses his telephones to coordinate loads and conduct counter surveillance while smuggling these loads. Cooperating Defendant one stated CARBAJAL also uses a computer to help facilitate his drug trafficking. Cooperating Defendant One recalls one instance where CARBAJAL showed the Cooperating Defendant One several smuggling routes which CARBAJAL pulled on the internet. CARBAJAL utilizes his computer to study the ranches around the Falfurrias Border Patrol Checkpoint and develop new smuggling routes.

Source information indicates Jose Maria CARBAJAL Jr. uses his home to facilitate his drug trafficking business. CARBAJAL has stated he receives large amounts of currency at his home as payment for loads of marijuana he has smuggled or sold. CARBAJAL has also stated he keeps a large amount of cash at his home in case he ever needs it.

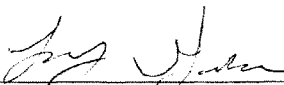
Cooperating Defendant Two also states CARBAJAL uses this money to pay the individuals who work for him, out of his house. Cooperating Defendant Two has stated CARBAJAL prefers conducting his drug trafficking business out of his own home because he feels he is being watched and does not like to discuss business over the phone.

Jose Maria CARBAJAL Jr. also utilizes his vehicles to facilitate his drug trafficking business. On September 22, 2010, Cooperating Defendant Two met with CARBAJAL to discuss drug business. Your affiant has reviewed a recording of this meeting. Your affiant recognizes the voices of Cooperating Defendant Two and CARBAJAL on this recording. The recording of this encounter demonstrates the following facts. CARBAJAL informed Cooperating Defendant two he had just returned

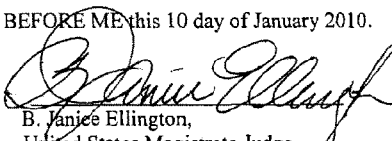
from a trip to Arkansas. CARBAJAL travelled to Arkansas in his white Z71 Tahoe to pick up \$80,000 which was owed for drugs he transported for other individuals.

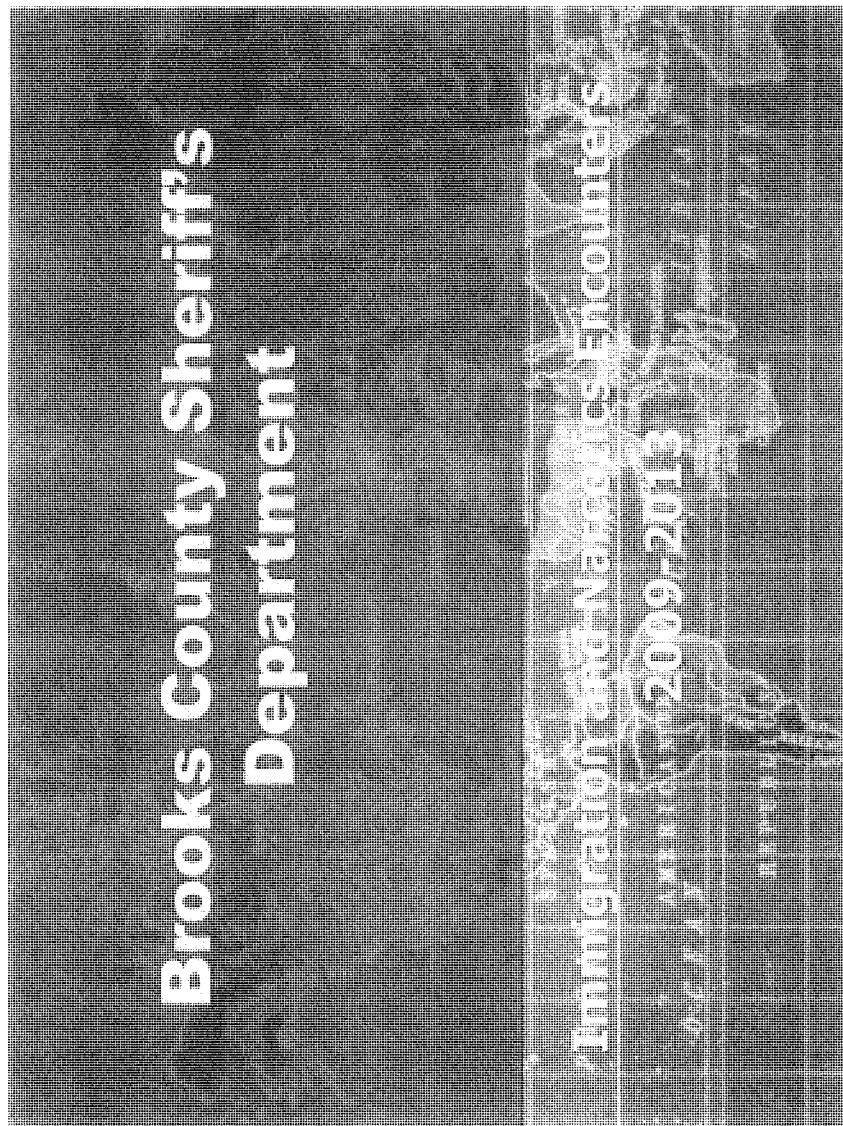
CARBAJAL also utilizes his maroon Jeep Wrangler to help scout ranches and roadways for smuggling routes. On December 2, 2010, CARBAJAL was encountered by Game Warden Royce Isles on the Hector Lopez Ranch near Falfurrias, Texas. CARBAJAL was driving his Maroon Jeep Wrangler (TX: CB2F484) on the Ranch. CARBAJAL informed the Game Warden he was helping the ranch foreman fix fences on the Ranch. Game Warden Isles did not observe any tools in the vehicle and CARBAJAL was clean as if he were not working. CARBAJAL was wearing shorts and a t-shirt. Isles stated from his personal experience, repairing fences is a dirty task which requires tools and supplies to complete. Game Warden Isles believed CARBAJAL was trying to mislead Isles into something which did not occur. Through consensually recorded meets, Agents have identified this particular ranch as one of the ranches CARBAJAL uses to smuggle his marijuana.

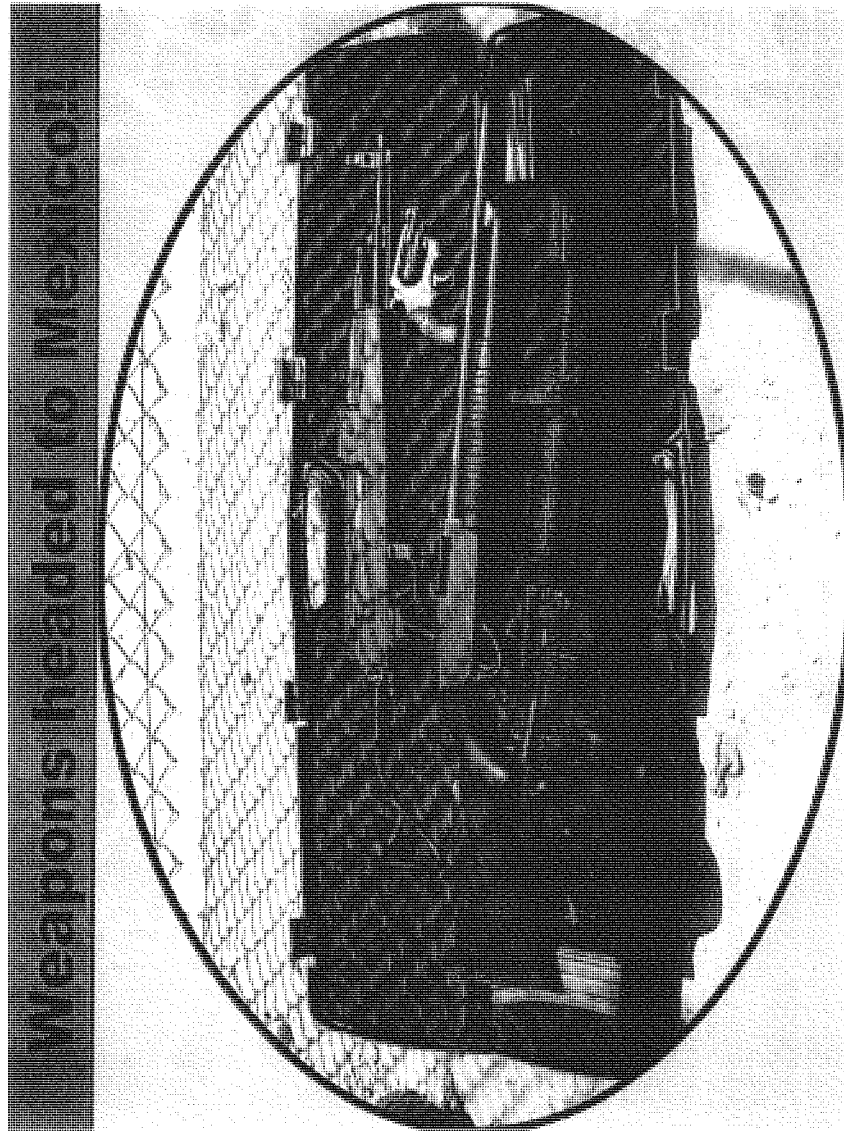
Cooperating Defendant One and Cooperating Defendant Two stated CARBAJAL has stored vehicles he uses to smuggle marijuana, such as All Terrain Vehicles and Pickup Trucks on his property in the past.

  
Larry Gamboa, Special Agent  
Homeland Security Investigations

SWORN TO AND SUBSCRIBED BEFORE ME this 10 day of January 2010.

  
B. Janice Ellington,  
United States Magistrate Judge



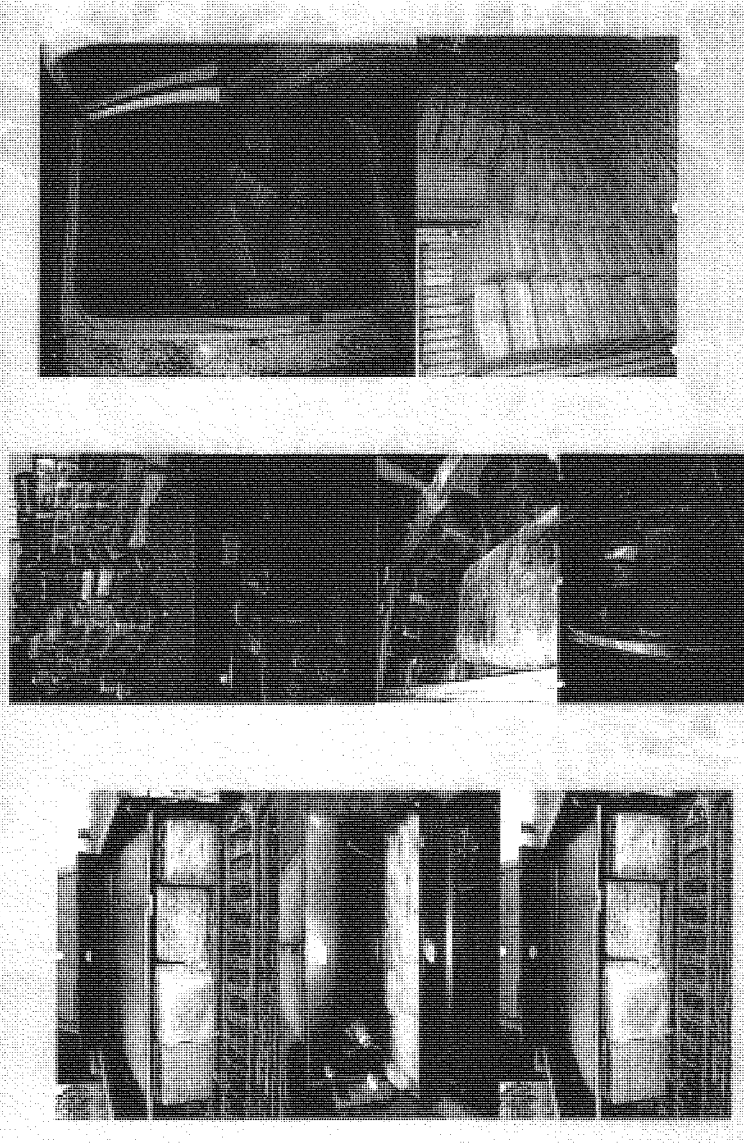






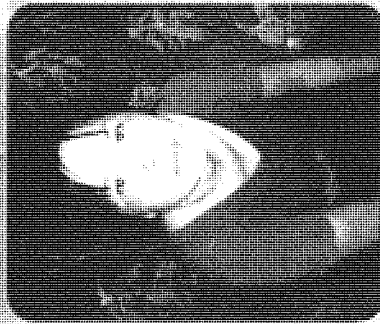
**Narcotics Seizures in the Brush!**

## Narcotics Seizures in the Brush!

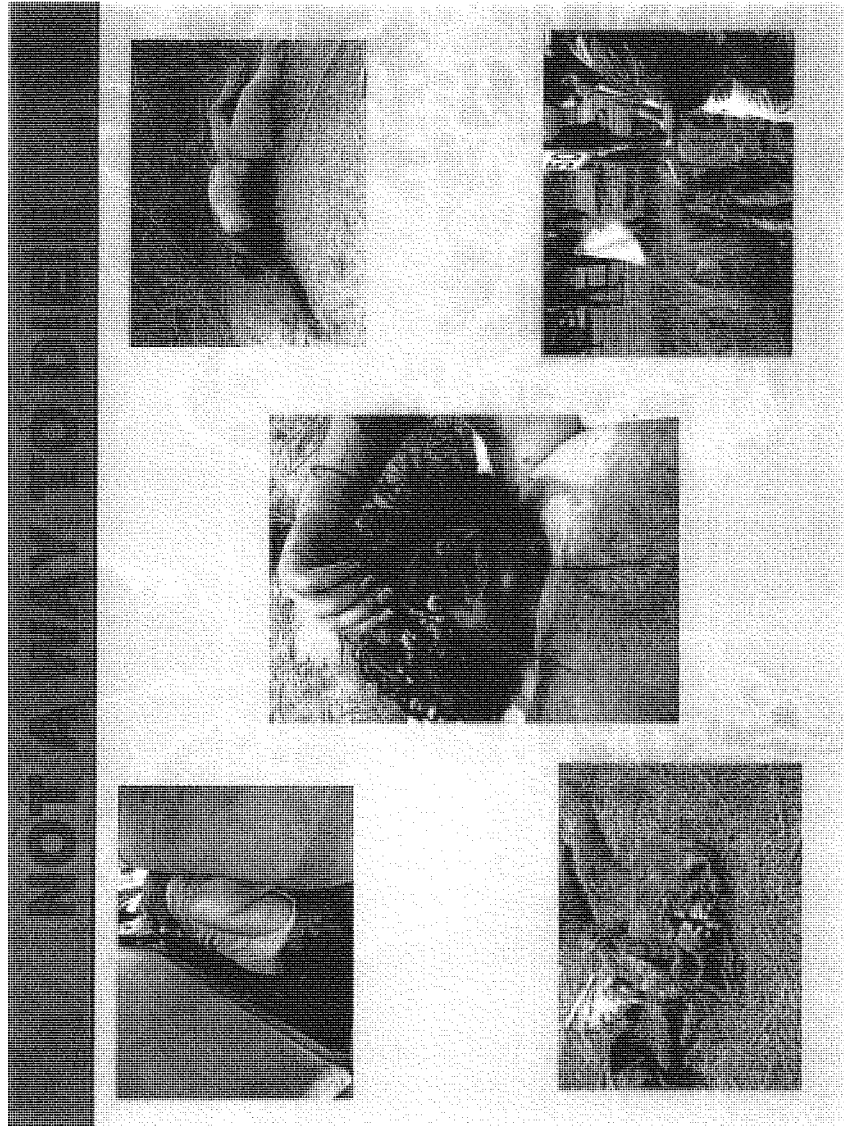


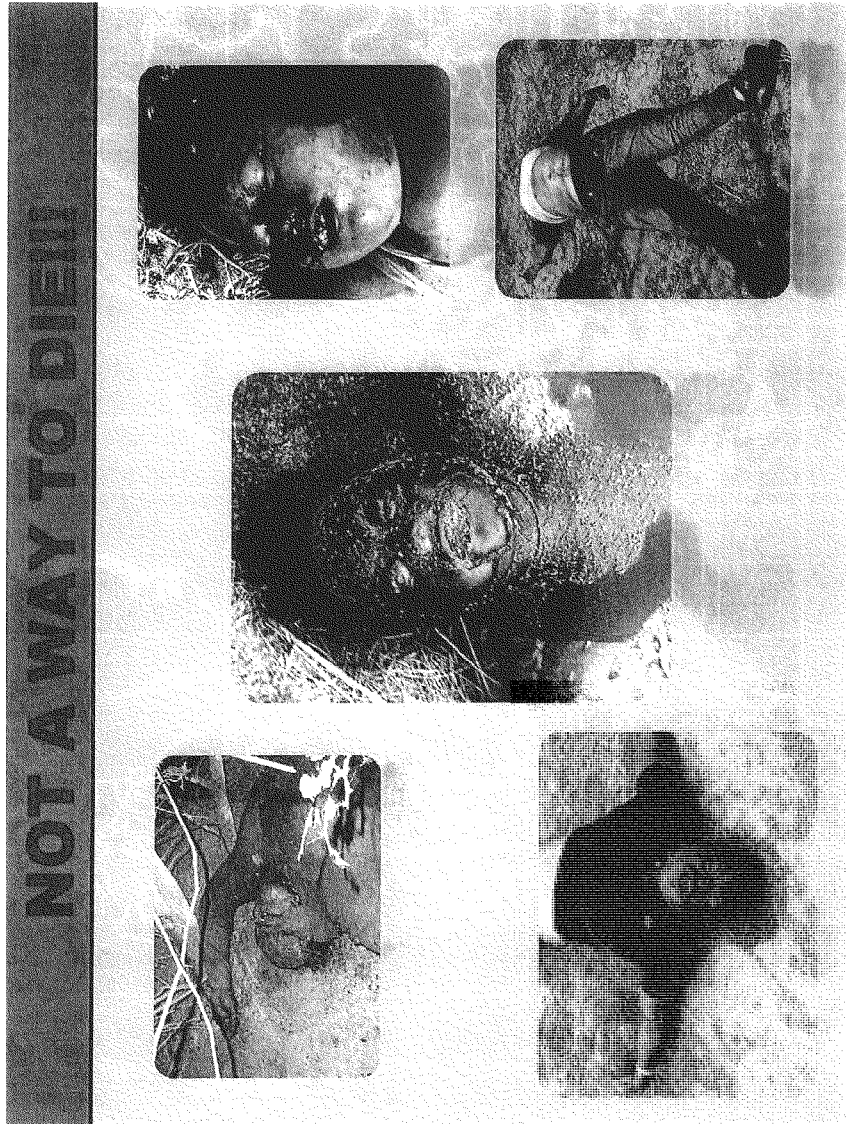
# Undocumented Alien

## Encounters

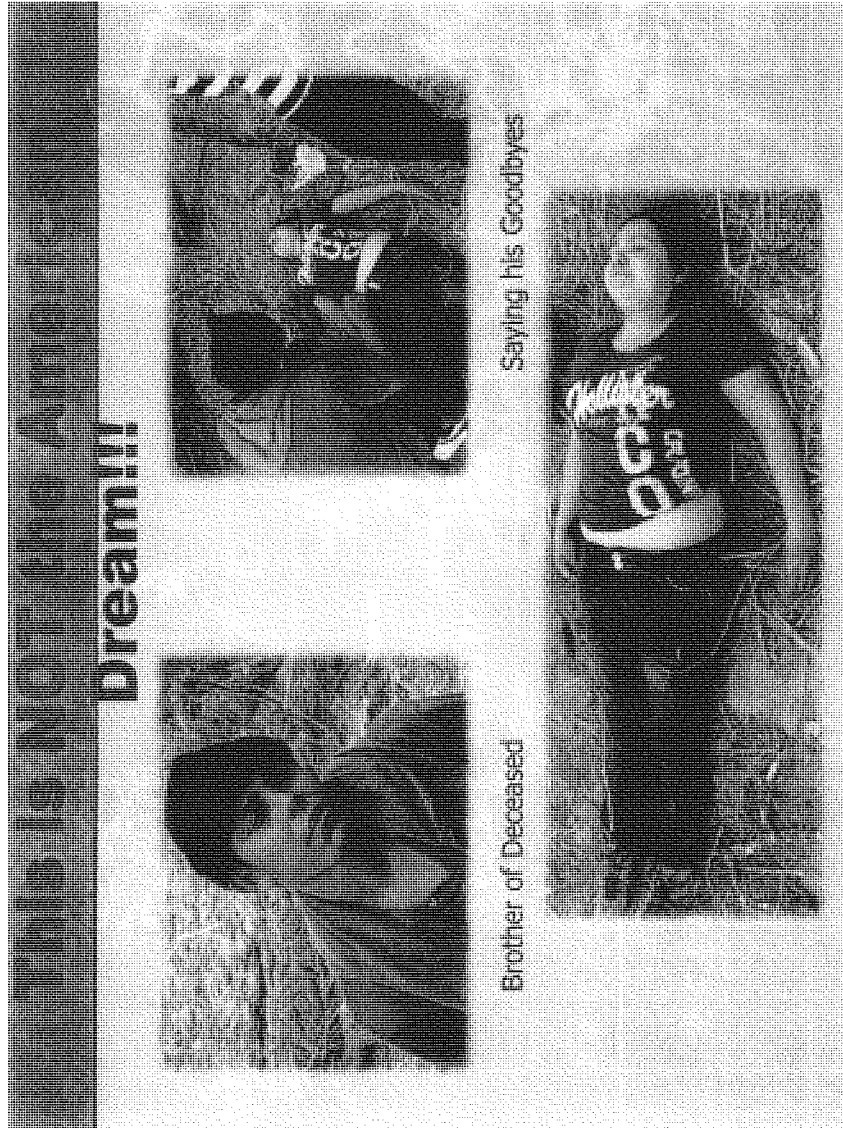












**Dream!!**

Saying his Goodbyes

Brother of Deceased

MARY ANN PULIDO  
ADMINISTRATIVE ASSISTANT  
  
LUCY SALINAS  
OFFICE MANAGER



P. O. BOX 615  
217 E. MILLER ST.  
FALFURRIAS, TEXAS 78355  
PHONES: OFFICE (361) 325-5470  
EXTENSIONS: 229, 247  
FAX: (361) 325-5369

**RAUL M. RAMIREZ**  
BROOKS COUNTY JUDGE

December 3, 2013

To the Honorable:  
United States Senator John Cornyn  
United States Senator Ted Cruz  
United States Congressman Ruben Hinojosa  
United States Congressman Henry Cuellar  
United Congressman Filemon Vela

We want to thank you for all the assistance and support you have given to South Texas and Brooks County over the years. Today, we ask for more support in our efforts to secure our United States Border with Mexico. As you know, we are a small rural county with limited resources in Deep South Texas and home to a U.S. Border Patrol Checkpoint located at the center of our county.

Our responsibility is to respond daily to the actions of illegal smugglers of drugs and human trafficking. Occurrences such as "smuggler breakouts" are experienced throughout Brooks County, and the County seat, Falfurrias, which have become commonplace. It is now a daily practice for the Brooks County Sheriff's Department to respond to stranded, vulnerable, weak and many times deceased immigrants in the punishing desert-like terrain of Brooks County.

Brooks County taxable values have declined over the past five(5) years in an unprecedented fashion; thus, causing deep austerity measures to the salaries and budgets for the Brooks County Sheriff's Department. The previously self-sustaining department budget for the Brooks County Sheriff's Department has been affected due to the substantial increase of deaths among undocumented immigrants with related costs.

Our support include the Falfurrias City Council and their Police Department for Brooks County to be included in the United States Department of Homeland Security Border County Region for the purpose of securing state and federal funding for projects such as drug interdiction , border security, and border enforcement; and the Brooks County Border County designation would be used to secure funding from grants, which are designed to be a cost-savings; these funds lower the total cost of operations and lowers the bottom line cost to our citizens.

The Brooks County Sheriff's Department will be eligible to use financial assistance programs and would benefit from the financial assistance of State and Federal agencies. We ask for your assistance through a



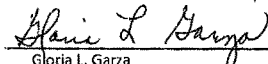
legislative and/or administrative solution. We have no negative impact on any other counties but will strengthen our border as rural counties with Border Patrol Checkpoints acting as a second inspection/second line of defense and should be considered border counties.

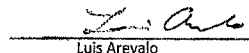
Please see the attached documents which details, since 2009, the number of calls we have responded to, the number of bodies that have been recovered, the number of autopsies and burials and all related costs that Brooks County has been burdened with in protecting our country, despite being one of the most impoverished counties in the nation.


Should you have any questions, please contact Sheriff Rey Rodriguez at 361-325-3696.

Sincerely,

Raul M. Ramirez  
Brooks County Judge

  
Gloria L. Garza  
Brooks County Commissioner Pct. #1

  
Luis Arevalo  
Brooks County Commissioner Pct. #2

  
Carlos Villarreal  
Brooks County Commissioner Pct. #3

  
Tony Martinez  
Brooks County Commissioner Pct. #4

  
REY RODRIGUEZ  
PO BOX 293  
FALFURRIAS, TX 78355

| 2009 | Date      | Location              | Milage | Rate/Mile | Total    | Admin. Fee | Transport | Storage      | Autopsy    | Total       |
|------|-----------|-----------------------|--------|-----------|----------|------------|-----------|--------------|------------|-------------|
| 1    | 1/5/2009  | Miller Ranch          | 11.8   | 0.555     | \$ 6.55  | \$         | \$740.00  | \$375.00 N/C | \$         | \$ 1,688.55 |
| 2    | 1/12/2009 | Cage Ranch            | 23.2   | 0.555     | \$ 12.88 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,694.88 |
| 3    | 1/17/2009 | Dos Jerez Ranch       | 34.6   | 0.555     | \$ 19.20 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,701.20 |
| 4    | 1/18/2009 | Los Perez Ranch       | 29.4   | 0.555     | \$ 16.32 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,698.32 |
| 5    | 2/15/2009 | Palo Blanco Ranch     | 22     | 0.555     | \$ 12.21 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,694.21 |
| 6    | 2/17/2009 | William Gas Plant     | 22     | 0.555     | \$ 12.21 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,694.21 |
| 7    | 2/24/2009 | Laboritas Ranch       | 20.8   | 0.555     | \$ 11.54 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,693.54 |
| 8    | 2/23/2009 | El Tules Ranch        | 22     | 0.555     | \$ 12.21 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,694.21 |
| 9    | 2/20/2009 | Cage Ranch            | 31.2   | 0.555     | \$ 17.32 | \$ 567.00  | \$740.00  | \$375.00     | \$2,000.00 | \$ 3,699.32 |
| 10   | 3/7/2009  | Maldonado Ranch       | 15     | 0.555     | \$ 8.33  | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,690.33 |
| 11   | 3/25/2009 | Mills Bennett Ranch   | 32.4   | 0.555     | \$ 17.98 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,699.98 |
| 12   | 3/29/2009 | Laboritas Ranch       | 18     | 0.555     | \$ 9.99  | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,691.99 |
| 13   | 4/1/2009  | Cage Ranch            | 31.2   | 0.555     | \$ 17.32 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,699.32 |
| 14   | 5/1/2009  | 1730 S. Hwy 281       | 26     | 0.555     | \$ 14.43 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,696.43 |
| 15   | 5/1/2009  | King Ranch            | 43.9   | 0.555     | \$ 24.36 | \$ 567.00  | \$740.00  | \$375.00     | \$1,500.00 | \$ 3,206.36 |
| 16   | 5/5/2009  | Santa Fe Ranch        | 71.6   | 0.555     | \$ 39.74 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,721.74 |
| 17   | 5/5/2009  | Wagonsheer Ranch      | 29.6   | 0.555     | \$ 16.43 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,698.43 |
| 18   | 5/5/2009  | Mariposa Ranch        | 37.4   | 0.555     | \$ 20.76 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,702.76 |
| 19   | 6/6/2009  | Isabella Ranch        | 56     | 0.555     | \$ 31.08 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,713.08 |
| 20   | 6/8/2009  | Buena Suerte Ranch    | 41.8   | 0.555     | \$ 23.20 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,705.20 |
| 21   | 6/12/2009 | San Antonio Ranch     | 24     | 0.555     | \$ 13.32 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,695.32 |
| 22   | 6/17/2009 | El Tule Ranch         | 27.6   | 0.555     | \$ 15.32 | \$ 567.00  | \$740.00  | \$375.00     | \$1,500.00 | \$ 3,197.32 |
| 23   | 6/22/2009 | El Tule Ranch         | 29.8   | 0.555     | \$ 16.54 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,698.54 |
| 24   | 7/3/2009  | Perez Ranch           | 74.2   | 0.555     | \$ 41.18 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,723.18 |
| 25   | 7/3/2009  | El Tule Ranch         | 31     | 0.555     | \$ 17.21 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,699.21 |
| 26   | 7/8/2009  | Mariposa Ranch        | 31     | 0.555     | \$ 17.21 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,699.21 |
| 27   | 7/10/2009 | Cage Ranch            | 39.4   | 0.555     | \$ 21.87 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,703.87 |
| 28   | 7/10/2009 | Larry Dickey Ranch    | 10     | 0.555     | \$ 5.55  | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,687.55 |
| 29   | 7/12/2009 | Isabella Ranch        | 56     | 0.555     | \$ 31.08 | \$ 567.00  | \$740.00  | \$375.00     | \$1,500.00 | \$ 3,213.08 |
| 30   | 7/12/2009 | King Ranch            | 27.6   | 0.555     | \$ 15.32 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,697.32 |
| 31   | 7/17/2009 | La Copa Ranch         | 32.8   | 0.555     | \$ 18.20 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,700.20 |
| 32   | 7/17/2009 | Jones Ranch           | 61.7   | 0.555     | \$ 34.24 | \$ 567.00  | \$740.00  | \$375.00     | \$1,500.00 | \$ 3,216.24 |
| 33   | 7/20/2009 | Murphy Ranch          | 21.4   | 0.555     | \$ 11.88 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,693.88 |
| 34   | 7/28/2009 | La Copa Ranch         | 42.8   | 0.555     | \$ 23.75 | \$ 567.00  | \$740.00  | \$375.00     | \$1,500.00 | \$ 3,205.75 |
| 35   | 8/3/2009  | Dos Palomas Ranch     | 25.6   | 0.555     | \$ 14.21 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,696.21 |
| 36   | 8/3/2009  | Cage Ranch            | 31.2   | 0.555     | \$ 17.32 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,699.32 |
| 37   | 8/4/2009  | King Ranch            | 36     | 0.555     | \$ 19.98 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,701.98 |
| 38   | 8/5/2009  | Halo Pad              | 0      | 0.555     | \$ -     | \$ 567.00  | \$740.00  | \$375.00     | \$1,500.00 | \$ 3,182.00 |
| 39   | 8/6/2009  | La Buena Suerte Ranch | 41.8   | 0.555     | \$ 23.20 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,705.20 |
| 40   | 8/11/2009 | Cage Ranch            | 34.4   | 0.555     | \$ 19.09 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,701.09 |
| 41   | 8/15/2009 | Lasater Ranch         | 22.6   | 0.555     | \$ 12.54 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,694.54 |
| 42   | 8/18/2009 | Co Rd 107             | 36.8   | 0.555     | \$ 20.42 | \$ 567.00  | \$740.00  | \$375.00 N/C | \$         | \$ 1,702.42 |

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|      |            |                      |        |       |             |              |             |              |                        |
|------|------------|----------------------|--------|-------|-------------|--------------|-------------|--------------|------------------------|
| 43   | 8/20/2009  | Cage Ranch           | 19     | 0.555 | \$ 10.55    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,692.55            |
| 44   | 8/21/2009  | Dos Jefes Ranch      | 12.8   | 0.555 | \$ 7.10     | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,689.10            |
| 45   | 8/23/2009  | Buena Suerte Ranch   | 45.6   | 0.555 | \$ 25.31    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,707.31            |
| 46   | 8/28/2009  | Jones Ranch          | 90.2   | 0.555 | \$ 50.06    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,732.06            |
| 47   | 9/2/2009   | Mariposa Ranch       | 34.1   | 0.555 | \$ 18.93    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,700.93            |
| 48   | 9/7/2009   | Poco Grande Ranch    | 25.8   | 0.555 | \$ 14.92    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,656.32            |
| 49   | 9/7/2009   | Tepluaine Ranch      | 46.2   | 0.555 | \$ 25.94    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,707.64            |
| 50   | 9/16/2009  | India Ranch          | 20.2   | 0.555 | \$ 11.71    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,693.21            |
| 51   | 9/21/2009  | Buena Suerte Ranch   | 41.8   | 0.555 | \$ 23.20    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,705.20            |
| 52   | 9/21/2009  | Cage Ranch           | 25.6   | 0.555 | \$ 14.21    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,696.21            |
| 53   | 10/6/2009  | Los Polos Ranch      | 20     | 0.555 | \$ 11.10    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,693.10            |
| 54   | 11/17/2009 | El Tule Ranch        | 35.4   | 0.555 | \$ 19.65    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,701.65            |
| 55   | 12/19/2009 | Cage Ranch           | 29.4   | 0.555 | \$ 16.32    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,698.32            |
| 2010 |            | 2009 TOTAL           | 1905.7 | 0.555 | \$ 1,001.05 | \$ 31,185.00 | \$40,700.00 | \$20,635.00  | \$ 104,511.05          |
| 1    | 1/4/2010   | Laboritas Ranch      | 15.8   | 0.555 | \$ 8.77     | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,690.77            |
| 2    | 5/23/2010  | La Palmas Ranch      | 29.4   | 0.555 | \$ 16.32    | \$ 567.00    | \$740.00    | \$375.00     | \$1,500.00 \$ 3,196.32 |
| 3    | 5/2/2010   | Encino               | 47.8   | 0.555 | \$ 26.53    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,708.53            |
| 4    | 5/31/2010  | La Copa Ranch        | 45.2   | 0.555 | \$ 25.09    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,707.09            |
| 5    | 6/2/2010   | Laboritas Ranch      | 15.8   | 0.555 | \$ 8.77     | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,690.77            |
| 6    | 5/3/2010   | Wright Ranch         | 20     | 0.555 | \$ 5.55     | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,687.55            |
| 7    | 6/29/2010  | Mariposa Ranch       | 26     | 0.555 | \$ 14.43    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,696.43            |
| 8    | 7/18/2010  | Buena Suerte Ranch   | 45.2   | 0.555 | \$ 25.09    | \$ 567.00    | \$740.00    | \$375.00     | \$1,500.00 \$ 3,207.09 |
| 9    | 7/15/2010  | El Tule Ranch        | 28.4   | 0.555 | \$ 15.76    | \$ 567.00    | \$740.00    | \$375.00     | \$1,500.00 \$ 3,197.76 |
| 10   | 8/12/2010  | Mariposa Ranch       | 40     | 0.555 | \$ 22.20    | \$ 567.00    | \$490.00    | \$375.00 N/C | \$ 1,454.20            |
| 11   | 8/13/2010  | La Copa Ranch        | 44.6   | 0.555 | \$ 24.75    | \$ 567.00    | \$490.00    | \$375.00 N/C | \$ 1,456.75            |
| 12   | 8/15/2010  | Jones Ranch          | 91.2   | 0.555 | \$ 50.62    | \$ 567.00    | \$490.00    | \$375.00 N/C | \$ 1,482.62            |
| 13   | 8/17/2010  | Jabonitos Ranch      | 27.2   | 0.555 | \$ 15.10    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,697.10            |
| 14   | 8/17/2010  | Cage Ranch           | 25.4   | 0.555 | \$ 12.99    | \$ 567.00    | \$490.00    | \$375.00 N/C | \$ 1,444.99            |
| 15   | 9/17/2010  | Cage Ranch           | 31.2   | 0.555 | \$ 17.32    | \$ 567.00    | \$490.00    | \$375.00 N/C | \$ 1,449.32            |
| 16   | 9/18/2010  | Hector Lopez Ranch   | 65     | 0.555 | \$ 36.08    | \$ 567.00    | \$490.00    | \$375.00 N/C | \$ 1,468.08            |
| 2011 |            | 2010 TOTAL           | 586.2  | 0.555 | \$ 325.34   | \$ 9,072.00  | \$10,340.00 | \$6,000.00   | \$ 30,237.34           |
| 1    | 2/8/2011   | India Ranch          | 21     | 0.555 | \$ 11.66    | \$ 567.00    | \$395.00    | \$375.00     | \$1,500.00 \$ 2,848.66 |
| 2    | 2/15/2011  | Las Dos Palmas Ranch | 29.9   | 0.555 | \$ 16.59    | \$ 567.00    | \$325.00    | \$375.00 N/C | \$ 1,783.59            |
| 3    | 3/2/2011   | Mariposa Ranch       | 34.1   | 0.555 | \$ 18.93    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,700.93            |
| 4    | 3/4/2011   | Jones Ranch          | 91.4   | 0.555 | \$ 50.73    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,732.73            |
| 5    | 3/9/2011   | King Ranch           | 43.9   | 0.555 | \$ 24.36    | \$ 567.00    | \$490.00    | \$375.00 N/C | \$ 1,456.36            |
| 6    | 3/10/2011  | Laster Ranch         | 19     | 0.555 | \$ 10.55    | \$ 567.00    | \$490.00    | \$375.00 N/C | \$ 1,442.55            |
| 7    | 3/18/2011  | FM 3065              | 17     | 0.555 | \$ 6.66     | \$ 567.00    | \$490.00    | \$375.00 N/C | \$ 1,438.66            |
| 8    | 4/12/2011  | Co Rd 219            | 17.8   | 0.555 | \$ 9.88     | \$ 567.00    | \$490.00    | \$375.00 N/C | \$ 1,441.88            |
| 9    | 4/12/2011  | Co Rd 107            | 24     | 0.555 | \$ 13.32    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,695.32            |
| 10   | 4/12/2011  | Co Rd 219            | 14.2   | 0.555 | \$ 7.88     | \$ 567.00    | \$490.00    | \$375.00 N/C | \$ 1,439.88            |

|     |            |                         |      |       |          |           |          |              |             |
|-----|------------|-------------------------|------|-------|----------|-----------|----------|--------------|-------------|
| 11. | 5/9/2011   | Los Compadres Ranch     | 42.4 | 0.555 | \$ 23.53 | \$ 567.00 | \$490.00 | \$375.00 N/C | \$ 1,455.53 |
| 12. | 5/10/2011  | Buena Suerte Ranch      | 29   | 0.555 | \$ 16.10 | \$ 567.00 | \$490.00 | \$375.00 N/C | \$ 2,948.10 |
| 13. | 5/13/2011  | Caballeros Ranch        | 35.2 | 0.555 | \$ 20.09 | \$ 567.00 | \$490.00 | \$375.00 N/C | \$ 1,452.09 |
| 14. | 5/24/2011  | Lobocitas Ranch         | 15.8 | 0.555 | \$ 8.71  | \$ 567.00 | \$490.00 | \$375.00 N/C | \$ 1,440.77 |
| 15. | 5/26/2011  | La Copa Ranch           | 35.4 | 0.555 | \$ 19.65 | \$ 567.00 | \$395.00 | \$375.00 N/C | \$ 1,356.65 |
| 16. | 5/27/2011  | Federales Ranch         | 48.6 | 0.555 | \$ 26.97 | \$ 567.00 | \$395.00 | \$375.00 N/C | \$ 1,363.97 |
| 17. | 6/6/2011   | AP Ranch                | 20   | 0.555 | \$ 11.10 | \$ 567.00 | \$490.00 | \$375.00 N/C | \$ 1,443.10 |
| 18. | 6/2/2011   | Co Rd 245               | 25   | 0.555 | \$ 13.88 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,695.88 |
| 19. | 6/12/2011  | Lasater Ranch           | 14.2 | 0.555 | \$ 7.88  | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 3,095.88 |
| 20. | 6/21/2011  | Co Rd 109               | 30.8 | 0.555 | \$ 17.09 | \$ 567.00 | \$495.00 | \$375.00 N/C | \$ 2,954.09 |
| 21. | 6/24/2011  | AP Ranch                | 25.4 | 0.555 | \$ 14.10 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,546.10 |
| 22. | 6/24/2011  | Cage Ranch              | 30.2 | 0.555 | \$ 16.76 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,546.76 |
| 23. | 7/5/2011   | Cage Ranch              | 31.2 | 0.555 | \$ 17.32 | \$ 567.00 | \$495.00 | \$375.00 N/C | \$ 1,454.32 |
| 24. | 7/7/2011   | Villaseca Ranch         | 10   | 0.555 | \$ 5.55  | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,557.55 |
| 25. | 7/15/2011  | Cage Ranch              | 31.2 | 0.555 | \$ 17.32 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 3,046.32 |
| 26. | 7/18/2011  | Cage Ranch              | 31.2 | 0.555 | \$ 15.87 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,547.87 |
| 27. | 7/26/2011  | Cage Ranch              | 28.6 | 0.555 | \$ 15.87 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,544.43 |
| 28. | 7/27/2011  | Cage Ranch              | 22.4 | 0.555 | \$ 12.43 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,542.55 |
| 29. | 7/27/2011  | Lawrence Ranch          | 15   | 0.555 | \$ 10.55 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,537.77 |
| 30. | 7/28/2011  | Co Rd 303 Garza         | 10.4 | 0.555 | \$ 5.77  | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,547.87 |
| 31. | 7/30/2011  | Cage Ranch              | 28.6 | 0.555 | \$ 15.87 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 2,959.31 |
| 32. | 8/9/2011   | Mariposa Ranch          | 40.2 | 0.555 | \$ 22.31 | \$ 567.00 | \$495.00 | \$375.00 N/C | \$ 1,564.08 |
| 33. | 8/15/2011  | Cage Ranch              | 57.8 | 0.555 | \$ 32.08 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,471.97 |
| 34. | 8/16/2011  | King Ranch              | 63   | 0.555 | \$ 34.97 | \$ 567.00 | \$495.00 | \$375.00 N/C | \$ 1,548.65 |
| 35. | 8/17/2011  | Los Palos Ranch         | 30   | 0.555 | \$ 16.65 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,541.66 |
| 36. | 8/25/2011  | AP Ranch                | 17.4 | 0.555 | \$ 9.66  | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,445.88 |
| 37. | 8/28/2011  | Los Hermanos Ranch      | 16   | 0.555 | \$ 8.88  | \$ 567.00 | \$495.00 | \$375.00 N/C | \$ 1,548.59 |
| 38. | 8/29/2011  | Los Dos Palomas         | 26.9 | 0.555 | \$ 16.59 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,557.64 |
| 39. | 8/30/2011  | Tepeguilla Ranch        | 46.2 | 0.555 | \$ 25.64 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,449.99 |
| 40. | 8/31/2011  | W 285 & Duval Co Rd 240 | 23.4 | 0.555 | \$ 12.99 | \$ 567.00 | \$495.00 | \$375.00 N/C | \$ 1,556.20 |
| 41. | 9/8/2011   | Los Palos Ranch         | 49   | 0.555 | \$ 27.20 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,556.36 |
| 42. | 9/5/2011   | King Ranch              | 48.9 | 0.555 | \$ 24.36 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,549.76 |
| 43. | 9/6/2011   | King Ranch              | 32   | 0.555 | \$ 17.76 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,585.77 |
| 44. | 9/10/2011  | Hauser Ranch            | 6.8  | 0.555 | \$ 3.77  | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 2,950.76 |
| 45. | 9/16/2011  | Co Rd 231               | 24.8 | 0.555 | \$ 13.76 | \$ 567.00 | \$495.00 | \$375.00 N/C | \$ 1,586.28 |
| 46. | 9/16/2011  | La Roca Ranch           | 97.8 | 0.555 | \$ 54.38 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,551.43 |
| 47. | 9/20/2011  | Caballeros Ranch        | 35   | 0.555 | \$ 19.43 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,543.43 |
| 48. | 9/24/2011  | Hollywood Camp          | 20.6 | 0.555 | \$ 11.43 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,561.08 |
| 49. | 9/29/2011  | King Ranch              | 52.4 | 0.555 | \$ 29.08 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,442.55 |
| 50. | 9/30/2011  | Ann Perez Ranch         | 10   | 0.555 | \$ 5.55  | \$ 567.00 | \$495.00 | \$375.00 N/C | \$ 3,047.76 |
| 51. | 10/3/2011  | El Tule Ranch           | 28.4 | 0.555 | \$ 15.76 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 3,187.66 |
| 52. | 10/17/2011 | La India Ranch          | 10.2 | 0.555 | \$ 5.66  | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,543.43 |
| 53. | 10/29/2011 | Hollywood Camp          | 20.6 | 0.555 | \$ 11.43 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,543.43 |

|      |            |                     |        |       |             |              |             |              |               |
|------|------------|---------------------|--------|-------|-------------|--------------|-------------|--------------|---------------|
| 54   | 11/2/2011  | Mariposa Ranch      | 34.1   | 0.555 | \$ 18.03    | \$ 567.00    | \$495.00    | \$375.00 N/C | \$ 1,455.92   |
| 55   | 11/6/2011  | Geddes Ranch        | 38.2   | 0.555 | \$ 21.20    | \$ 567.00    | \$590.00    | \$375.00 N/C | \$ 1,553.20   |
| 56   | 11/12/2011 | Hector Lopez Ranch  | 63     | 0.555 | \$ 36.08    | \$ 567.00    | \$590.00    | \$375.00 N/C | \$ 1,568.08   |
| 57   | 11/22/2011 | Mariposa Ranch      | 34.1   | 0.555 | \$ 18.93    | \$ 567.00    | \$590.00    | \$375.00 N/C | \$ 1,550.93   |
| 58   | 11/28/2011 | Rancho La Fa        | 106.6  | 0.555 | \$ 59.16    | \$ 567.00    | \$495.00    | \$375.00 N/C | \$ 1,496.16   |
| 59   | 12/5/2011  | El Tulle Ranch      | 22.8   | 0.555 | \$ 12.65    | \$ 567.00    | \$590.00    | \$375.00 N/C | \$ 1,544.65   |
| 60   | 12/8/2011  | El Tulle Ranch      | 24.6   | 0.555 | \$ 13.65    | \$ 567.00    | \$495.00    | \$375.00 N/C | \$ 1,450.65   |
| 61   | 12/9/2011  | Latter Ranch        | 19     | 0.555 | \$ 10.55    | \$ 567.00    | \$590.00    | \$375.00 N/C | \$ 1,542.55   |
| 62   | 12/16/2011 | Joe Esparza Ranch   | 15     | 0.555 | \$ 8.33     | \$ 567.00    | \$590.00    | \$375.00 N/C | \$ 1,561.42   |
| 63   | 12/26/2011 | Fidelio Saenz Ranch | 53     | 0.555 | \$ 29.42    | \$ 567.00    | \$590.00    | \$375.00 N/C | \$ 1,446.10   |
| 64   | 12/28/2011 | Jones Ranch         | 16.4   | 0.555 | \$ 9.10     | \$ 567.00    | \$495.00    | \$375.00 N/C | \$ 1,446.10   |
|      |            | 2011 TOTAL          | 2057.1 | 0.555 | \$ 1,141.69 | \$ 36,288.00 | \$35,425.00 | \$13,000.00  | \$ 111,854.63 |
| 2012 |            |                     |        |       |             |              |             |              |               |
| 1    | 1/23/2012  | King Ranch          | 30     | 0.555 | \$ 16.65    | \$ 567.00    | \$495.00    | \$375.00 N/C | \$ 1,453.65   |
| 2    | 2/9/2012   | Laboritas Ranch     | 10     | 0.555 | \$ 5.55     | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,687.55   |
| 3    | 2/11/2012  | Buena Suerte Ranch  | 98.8   | 0.555 | \$ 21.53    | \$ 567.00    | \$495.00    | \$375.00 N/C | \$ 1,458.53   |
| 4    | 2/16/2012  | Los Compadres Ranch | 34.9   | 0.555 | \$ 19.37    | \$ 567.00    | \$590.00    | \$1,500.00   | \$ 3,051.37   |
| 5    | 3/2/2012   | La Ruzia Ranch      | 5.1    | 0.555 | \$ 29.97    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,711.97   |
| 6    | 4/19/2012  | Los Harmanos Ranch  | 16     | 0.555 | \$ 8.88     | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,690.88   |
| 7    | 4/24/2012  | Hwy 281             | 17.3   | 0.555 | \$ 9.60     | \$ 567.00    | \$495.00    | \$375.00 N/C | \$ 1,446.60   |
| 8    | 7/26/2012  | Mariposa Ranch      | 34.1   | 0.555 | \$ 18.93    | \$ 567.00    | \$590.00    | \$375.00 N/C | \$ 1,550.93   |
| 9    | 4/27/2012  | Mariposa Ranch      | 25.8   | 0.555 | \$ 14.32    | \$ 567.00    | \$495.00    | \$375.00 N/C | \$ 1,451.32   |
| 10   | 5/6/2012   | Cage Ranch          | 96.6   | 0.555 | \$ 20.31    | \$ 567.00    | \$495.00    | \$375.00 N/C | \$ 1,457.81   |
| 11   | 5/13/2012  | King Ranch          | 66.4   | 0.555 | \$ 36.85    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,718.85   |
| 12   | 5/18/2012  | Perez Ranch         | 74.2   | 0.555 | \$ 41.18    | \$ 567.00    | \$590.00    | \$375.00 N/C | \$ 1,573.18   |
| 13   | 5/30/2012  | Mariposa Ranch      | 51.8   | 0.555 | \$ 28.75    | \$ 567.00    | \$590.00    | \$375.00 N/C | \$ 1,560.75   |
| 14   | 5/30/2012  | Cage Ranch          | 40     | 0.555 | \$ 22.20    | \$ 567.00    | \$590.00    | \$375.00 N/C | \$ 1,554.20   |
| 15   | 6/1/2012   | Cage Ranch          | 31.2   | 0.555 | \$ 17.32    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,699.32   |
| 16   | 6/2/2012   | Cage Ranch          | 31.2   | 0.555 | \$ 17.32    | \$ 567.00    | \$590.00    | \$375.00 N/C | \$ 1,549.32   |
| 17   | 6/4/2012   | Cage Ranch          | 39     | 0.555 | \$ 21.65    | \$ 567.00    | \$590.00    | \$375.00 N/C | \$ 1,547.65   |
| 18   | 6/6/2012   | Poco Grande Ranch   | 28.2   | 0.555 | \$ 15.65    | \$ 567.00    | \$590.00    | \$375.00 N/C | \$ 1,547.65   |
| 19   | 6/6/2012   | Co Rd 219           | 15     | 0.555 | \$ 8.33     | \$ 567.00    | \$590.00    | \$375.00 N/C | \$ 1,540.33   |
| 20   | 6/8/2012   | El Pintor Ranch     | 37.8   | 0.555 | \$ 20.98    | \$ 567.00    | \$495.00    | \$375.00 N/C | \$ 1,457.98   |
| 21   | 6/8/2012   | Geddes Ranch        | 38.2   | 0.555 | \$ 21.20    | \$ 567.00    | \$640.00    | \$375.00 N/C | \$ 1,603.20   |
| 22   | 6/12/2012  | Mariposa Ranch      | 22.8   | 0.555 | \$ 12.65    | \$ 567.00    | \$495.00    | \$375.00 N/C | \$ 1,449.65   |
| 23   | 6/12/2012  | Los Palomas Ranch   | 24.8   | 0.555 | \$ 13.76    | \$ 567.00    | \$495.00    | \$375.00 N/C | \$ 1,450.76   |
| 24   | 6/14/2012  | King Ranch          | 69.6   | 0.555 | \$ 36.63    | \$ 567.00    | \$590.00    | \$375.00 N/C | \$ 1,570.63   |
| 25   | 6/16/2012  | El Tulle Ranch      | 27.6   | 0.555 | \$ 15.32    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,697.32   |
| 26   | 6/16/2012  | Co Rd 107a          | 22     | 0.555 | \$ 12.21    | \$ 567.00    | \$590.00    | \$375.00     | \$ 3,044.21   |
| 27   | 6/19/2012  | Coyote Ranch        | 57.8   | 0.555 | \$ 32.08    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,714.08   |
| 28   | 6/19/2012  | Vickers Ranch       | 24.4   | 0.555 | \$ 13.54    | \$ 567.00    | \$590.00    | \$375.00     | \$ 3,045.54   |
| 29   | 6/25/2012  | Co Rd 109           | 24.4   | 0.555 | \$ 13.54    | \$ 567.00    | \$590.00    | \$375.00 N/C | \$ 1,545.54   |
| 30   | 6/28/2012  | La Cantina Ranch    | 25.8   | 0.555 | \$ 16.54    | \$ 567.00    | \$495.00    | \$375.00 N/C | \$ 1,453.54   |

|    |           |                     |      |       |          |           |          |              |             |
|----|-----------|---------------------|------|-------|----------|-----------|----------|--------------|-------------|
| 31 | 6/30/2012 | Cage Ranch          | 40.8 | 0.555 | \$ 22.64 | \$ 567.00 | \$495.00 | \$375.00 N/C | \$ 1,458.64 |
| 32 | 6/30/2012 | Mariposa Ranch      | 30.8 | 0.555 | \$ 17.09 | \$ 567.00 | \$495.00 | \$375.00 N/C | \$ 1,454.09 |
| 33 | 7/1/2012  | Tepequale Ranch     | 48.4 | 0.555 | \$ 26.86 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,558.86 |
| 34 | 7/1/2012  | Ernesto Minor Ranch | 24.8 | 0.555 | \$ 13.76 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,545.76 |
| 35 | 7/3/2012  | Mariposa Ranch      | 29.4 | 0.555 | \$ 16.32 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,548.32 |
| 36 | 7/8/2012  | Palo Blanco Ranch   | 19.8 | 0.555 | \$ 10.99 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,502.99 |
| 37 | 7/8/2012  | Cage Ranch          | 40.6 | 0.555 | \$ 22.53 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,554.53 |
| 38 | 7/8/2012  | La Cantina Ranch    | 29.7 | 0.555 | \$ 16.48 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,548.48 |
| 39 | 7/13/2012 | King Ranch          | 43.9 | 0.555 | \$ 24.36 | \$ 567.00 | \$495.00 | \$375.00 N/C | \$ 1,706.36 |
| 40 | 7/14/2012 | King Ranch          | 43.9 | 0.555 | \$ 24.36 | \$ 567.00 | \$495.00 | \$375.00 N/C | \$ 1,706.36 |
| 41 | 7/15/2012 | Dawson Ranch        | 35   | 0.555 | \$ 19.43 | \$ 567.00 | \$495.00 | \$375.00 N/C | \$ 1,456.43 |
| 42 | 7/16/2012 | Myrdos Ranch        | 51.4 | 0.555 | \$ 28.33 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,560.33 |
| 43 | 7/17/2012 | Los Compadres Ranch | 36.6 | 0.555 | \$ 20.31 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,702.31 |
| 44 | 7/20/2012 | Bueno Suerte Ranch  | 41.8 | 0.555 | \$ 23.20 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,705.20 |
| 45 | 7/20/2012 | La Copa Ranch       | 42   | 0.555 | \$ 23.31 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,555.31 |
| 46 | 7/22/2012 | La Blanca Ranch     | 31.2 | 0.555 | \$ 17.37 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,549.37 |
| 47 | 7/24/2012 | Cage Ranch          | 38   | 0.555 | \$ 9.99  | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,541.99 |
| 48 | 7/25/2012 | Mariposa Ranch      | 34.1 | 0.555 | \$ 18.93 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,550.93 |
| 49 | 7/25/2012 | Palo Blanco Ranch   | 18   | 0.555 | \$ 9.99  | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,541.99 |
| 50 | 7/26/2012 | Mariposa Ranch      | 34.1 | 0.555 | \$ 18.93 | \$ 567.00 | \$495.00 | \$375.00 N/C | \$ 1,455.93 |
| 51 | 7/26/2012 | Los Palomas Ranch   | 29.9 | 0.555 | \$ 16.56 | \$ 567.00 | \$495.00 | \$375.00 N/C | \$ 1,453.59 |
| 52 | 7/28/2012 | King Ranch          | 38   | 0.555 | \$ 21.65 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,553.65 |
| 53 | 7/29/2012 | Hollywood Camp      | 20.6 | 0.555 | \$ 11.43 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,693.43 |
| 54 | 7/30/2012 | Labordas Ranch      | 18.2 | 0.555 | \$ 10.10 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,542.10 |
| 55 | 7/31/2012 | Mariposa Ranch      | 34.1 | 0.555 | \$ 18.93 | \$ 567.00 | \$590.00 | \$375.00 N/C | \$ 1,550.93 |
| 56 | 7/31/2012 | Mariposa Ranch      | 34.1 | 0.555 | \$ 18.93 | \$ 567.00 | \$495.00 | \$375.00 N/C | \$ 1,455.93 |
| 57 | 7/31/2012 | La Cantina Ranch    | 29.7 | 0.555 | \$ 16.48 | \$ 567.00 | \$495.00 | \$375.00 N/C | \$ 1,453.48 |
| 58 | 8/2/2012  | Mariposa Ranch      | 34.1 | 0.555 | \$ 18.93 | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,455.93 |
| 59 | 8/2/2012  | Cage Ranch          | 31.2 | 0.555 | \$ 17.32 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,693.32 |
| 60 | 8/5/2012  | Willie Matt Ranch   | 32.4 | 0.555 | \$ 17.98 | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,554.98 |
| 61 | 8/6/2012  | Hauser Ranch        | 6    | 0.555 | \$ 3.33  | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,685.33 |
| 62 | 8/7/2012  | Mariposa Ranch      | 29.4 | 0.555 | \$ 16.32 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,688.32 |
| 63 | 8/9/2012  | King Ranch          | 43.9 | 0.555 | \$ 24.36 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,706.36 |
| 64 | 8/14/2012 | Hauser Ranch        | 28.2 | 0.555 | \$ 15.65 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,697.65 |
| 65 | 7/11/2012 | West Ranch          | 32.4 | 0.555 | \$ 17.98 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,699.98 |
| 66 | 8/14/2012 | Cage Ranch          | 24.8 | 0.555 | \$ 13.76 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,695.76 |
| 67 | 8/15/2012 | King Ranch          | 64   | 0.555 | \$ 35.52 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,717.52 |
| 68 | 8/15/2012 | Cage Ranch          | 31.2 | 0.555 | \$ 17.32 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,699.32 |
| 69 | 8/16/2012 | Cage Ranch          | 31.2 | 0.555 | \$ 17.32 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,699.32 |
| 70 | 8/16/2012 | Jones Ranch         | 61.7 | 0.555 | \$ 34.24 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,716.24 |
| 71 | 8/19/2012 | Labordas Ranch      | 10.5 | 0.555 | \$ 5.83  | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,687.83 |
| 72 | 8/24/2012 | Cage Ranch          | 31.2 | 0.555 | \$ 17.32 | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,554.32 |
| 73 | 8/22/2012 | King Ranch          | 38.4 | 0.555 | \$ 21.31 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,703.31 |

|     |            |                     |      |       |          |           |          |              |             |
|-----|------------|---------------------|------|-------|----------|-----------|----------|--------------|-------------|
| 74  | 8/23/2012  | Los Federales Ranch | 45   | 0.555 | \$ 24.98 | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,561.98 |
| 75  | 8/24/2012  | Cage Ranch          | 37.6 | 0.555 | \$ 20.87 | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,557.87 |
| 76  | 8/28/2012  | Tepeguaje Ranch     | 46.2 | 0.555 | \$ 25.64 | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,562.64 |
| 77  | 8/29/2012  | Mariposa Ranch      | 38   | 0.555 | \$ 21.09 | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,558.09 |
| 78  | 9/1/2012   | Los Laboritas Ranch | 22   | 0.555 | \$ 12.21 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,594.21 |
| 79  | 9/3/2012   | Palo Blanco Ranch   | 47   | 0.555 | \$ 26.09 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,708.09 |
| 80  | 9/6/2012   | Cage Ranch          | 31.2 | 0.555 | \$ 17.32 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,699.32 |
| 81  | 9/6/2012   | Mariposa Ranch      | 34.1 | 0.555 | \$ 18.93 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,700.93 |
| 82  | 9/6/2012   | King Ranch          | 43.9 | 0.555 | \$ 24.36 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,706.36 |
| 83  | 9/10/2012  | El Tule Ranch       | 27.6 | 0.555 | \$ 15.32 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,697.32 |
| 84  | 9/12/2012  | Solomon Ranch       | 10.8 | 0.555 | \$ 5.99  | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,542.99 |
| 85  | 9/12/2012  | Jones Ranch         | 61.7 | 0.555 | \$ 34.24 | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,571.24 |
| 86  | 9/12/2012  | King Ranch          | 38   | 0.555 | \$ 21.66 | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,558.66 |
| 87  | 9/13/2012  | King Ranch          | 28.4 | 0.555 | \$ 15.76 | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,552.76 |
| 88  | 9/14/2012  | Behind Walnart      | 6    | 0.555 | \$ 3.33  | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,685.33 |
| 89  | 9/14/2012  | Co Rd 215           | 9.8  | 0.555 | \$ 5.44  | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,687.44 |
| 90  | 9/14/2012  | La India Ranch      | 23.4 | 0.555 | \$ 12.99 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,694.99 |
| 91  | 9/15/2012  | Martinez Ranch      | 14.2 | 0.555 | \$ 7.88  | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,689.88 |
| 92  | 9/16/2012  | King Ranch          | 43.9 | 0.555 | \$ 24.36 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,706.36 |
| 93  | 9/17/2012  | Mariposa Ranch      | 40.8 | 0.555 | \$ 22.64 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,704.64 |
| 94  | 9/17/2012  | Cage Ranch          | 24.4 | 0.555 | \$ 13.54 | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,550.54 |
| 95  | 9/21/2012  | Bueno Suerte Ranch  | 37.6 | 0.555 | \$ 20.87 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,702.87 |
| 96  | 9/25/2012  | Laaster Ranch       | 14.2 | 0.555 | \$ 7.88  | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,689.88 |
| 97  | 9/25/2012  | Mariposa Ranch      | 39.4 | 0.555 | \$ 21.87 | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,558.87 |
| 98  | 9/26/2012  | Sullivan Ranch      | 14.2 | 0.555 | \$ 7.88  | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,544.88 |
| 99  | 9/28/2012  | Cage Ranch          | 31.2 | 0.555 | \$ 17.32 | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,554.32 |
| 100 | 9/29/2012  | Walther Ranch       | 30   | 0.555 | \$ 16.65 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,698.65 |
| 101 | 10/1/2012  | Poco Grande Ranch   | 29.2 | 0.555 | \$ 16.21 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,698.21 |
| 102 | 10/2/2012  | La Copa Ranch       | 33   | 0.555 | \$ 18.32 | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,555.32 |
| 103 | 10/2/2012  | King Ranch          | 46.8 | 0.555 | \$ 25.97 | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,562.97 |
| 104 | 10/4/2012  | Cage Ranch          | 31.2 | 0.555 | \$ 17.32 | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,554.32 |
| 105 | 10/5/2012  | La Borcitas Ranch   | 18.8 | 0.555 | \$ 10.43 | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,547.43 |
| 106 | 10/12/2012 | Cage Ranch          | 28.8 | 0.555 | \$ 15.98 | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,552.98 |
| 107 | 10/16/2012 | King Ranch          | 42   | 0.555 | \$ 23.31 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,705.31 |
| 108 | 10/17/2012 | Bueno Suerte Ranch  | 50.6 | 0.555 | \$ 28.08 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,710.08 |
| 109 | 10/17/2012 | La Paloma Ranch     | 58   | 0.555 | \$ 32.2  | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,685.22 |
| 110 | 10/18/2012 | Santa Fe Ranch      | 69.6 | 0.555 | \$ 38.63 | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,575.63 |
| 111 | 10/22/2012 | Cantu Ranch         | 20.6 | 0.555 | \$ 11.43 | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,548.43 |
| 112 | 10/22/2012 | El Tule Ranch       | 26.6 | 0.555 | \$ 14.76 | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,551.76 |
| 113 | 10/26/2012 | Co Rd 401           | 10.7 | 0.555 | \$ 5.66  | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,687.66 |
| 114 | 10/28/2012 | Dawson Ranch        | 35   | 0.555 | \$ 19.43 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,701.43 |
| 115 | 10/28/2012 | La Copa Ranch       | 42   | 0.555 | \$ 23.31 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,705.31 |
| 116 | 11/1/2012  | Jones Ranch         | 44.2 | 0.555 | \$ 24.53 | \$ 567.00 | \$595.00 | \$375.00 N/C | \$ 1,561.53 |

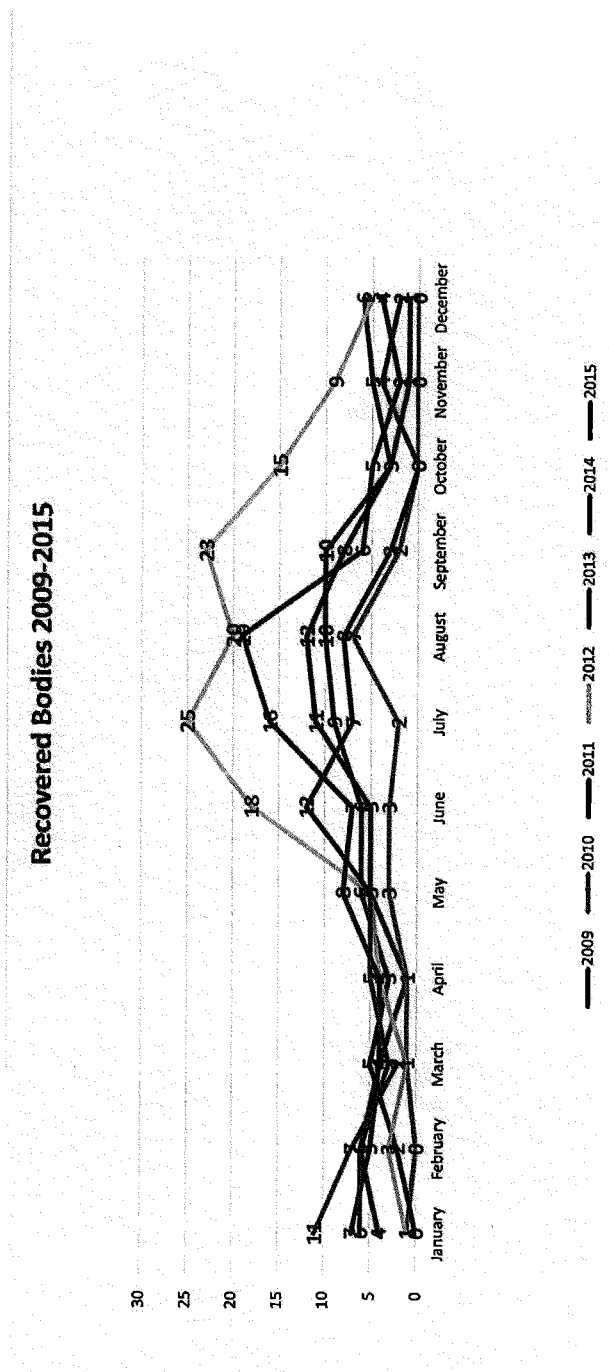
|      |            |                      |      |       |             |              |             |              |             |
|------|------------|----------------------|------|-------|-------------|--------------|-------------|--------------|-------------|
| 117  | 11/10/2012 | Singer Ranch         | 26.4 | 0.555 | \$ 14.65    | \$ 567.00    | \$595.00    | \$375.00 N/C | \$ 1,551.65 |
| 118  | 11/16/2012 | Los Compadres Ranch  | 18.5 | 0.555 | \$ 10.27    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 3,192.27 |
| 119  | 11/17/2012 | Creek Rd             | 14   | 0.555 | \$ 7.77     | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,689.77 |
| 120  | 11/20/2012 | Meads Ranch          | 18   | 0.555 | \$ 9.95     | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,661.99 |
| 121  | 11/20/2012 | Cage Ranch           | 24.6 | 0.555 | \$ 13.65    | \$ 567.00    | \$595.00    | \$375.00 N/C | \$ 1,550.65 |
| 122  | 11/27/2012 | Jones Ranch          | 45   | 0.555 | \$ 24.98    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,706.98 |
| 123  | 11/27/2012 | Jones Ranch          | 41.6 | 0.555 | \$ 23.09    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,705.09 |
| 124  | 11/30/2012 | Dos Palomas Ranch    | 24   | 0.555 | \$ 13.32    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,695.32 |
| 125  | 12/7/2012  | Pena Ranch           | 31.2 | 0.555 | \$ 17.43    | \$ 567.00    | \$595.00    | \$375.00 N/C | \$ 1,554.43 |
| 126  | 12/9/2012  | Co Rd 215            | 10   | 0.555 | \$ 5.55     | \$ 567.00    | \$595.00    | \$375.00 N/C | \$ 1,542.55 |
| 127  | 12/9/2012  | Mills Bennett Ranch  | 32.4 | 0.555 | \$ 17.98    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 3,195.98 |
| 128  | 12/27/2012 | Los Dos Palomas      | 29.9 | 0.555 | \$ 16.59    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,688.59 |
| 129  | 12/25/2012 | Federates Ranch      | 45   | 0.555 | \$ 24.98    | \$ 567.00    | \$595.00    | \$375.00 N/C | \$ 1,561.98 |
| 2013 |            | 2012 TOTAL           | 4221 | 0.555 | \$ 2,342.66 | \$ 73,145.00 | \$82,790.00 | \$48,375.00  | \$19,500.00 |
| 1    | 1/5/2013   | La Copa Ranch        | 60.4 | 0.555 | \$ 33.52    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,715.52 |
| 2    | 1/7/2013   | Los Laboristas Ranch | 10.4 | 0.555 | \$ 5.77     | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,687.77 |
| 3    | 1/12/2013  | Dos Palomas Ranch    | 29.9 | 0.555 | \$ 16.59    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,698.59 |
| 4    | 1/13/2013  | Jack Gardes Ranch    | 32   | 0.555 | \$ 17.76    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,699.76 |
| 5    | 1/17/2013  | Santa Fe Ranch       | 70.8 | 0.555 | \$ 39.29    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,721.29 |
| 6    | 1/21/2013  | El Tulio Ranch       | 29   | 0.555 | \$ 16.10    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,688.10 |
| 7    | 1/24/2013  | Mariposa Ranch       | 47.6 | 0.555 | \$ 26.47    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,708.47 |
| 8    | 2/12/2013  | King Ranch           | 40.2 | 0.555 | \$ 22.31    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,704.31 |
| 9    | 2/14/2013  | King Ranch           | 43.9 | 0.555 | \$ 24.36    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,706.36 |
| 10   | 2/17/2013  | Caballeros Ranch     | 35.2 | 0.555 | \$ 19.54    | \$ 567.00    | \$595.00    | \$375.00 N/C | \$ 1,556.54 |
| 11   | 2/17/2013  | King Ranch           | 33   | 0.555 | \$ 18.32    | \$ 567.00    | \$740.00    | \$403.00     | \$1,500.00  |
| 12   | 2/17/2013  | FM 3065              | 14   | 0.555 | \$ 7.77     | \$ 567.00    | \$595.00    | \$375.00 N/C | \$ 1,544.77 |
| 13   | 3/7/2013   | King Ranch           | 37   | 0.555 | \$ 20.54    | \$ 567.00    | \$595.00    | \$375.00 N/C | \$ 1,557.54 |
| 14   | 3/19/2013  | Cage Ranch           | 22.2 | 0.555 | \$ 12.32    | \$ 567.00    | \$595.00    | \$375.00 N/C | \$ 1,549.32 |
| 15   | 3/22/2013  | Los Hartmanos Ranch  | 15.4 | 0.555 | \$ 8.55     | \$ 567.00    | \$595.00    | \$375.00 N/C | \$ 1,545.55 |
| 16   | 3/23/2013  | Rancho De Mil Ojos   | 31   | 0.555 | \$ 17.21    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,699.21 |
| 17   | 4/2/2013   | Laboristas Ranch     | 18   | 0.555 | \$ 9.99     | \$ 567.00    | \$595.00    | \$375.00 N/C | \$ 1,546.99 |
| 18   | 4/5/2013   | Villarreal Ranch     | 14.2 | 0.555 | \$ 7.88     | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,689.88 |
| 19   | 4/6/2013   | Los Federates Ranch  | 41.4 | 0.555 | \$ 22.98    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,704.98 |
| 20   | 4/8/2013   | Cardina Ranch        | 25.6 | 0.555 | \$ 16.43    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,698.43 |
| 21   | 5/19/2013  | Cage Ranch           | 27.4 | 0.555 | \$ 15.21    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,697.21 |
| 22   | 5/20/2013  | Mariposa Ranch       | 27.8 | 0.555 | \$ 15.43    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,697.43 |
| 23   | 5/20/2013  | Mariposa Ranch       | 31.2 | 0.555 | \$ 17.32    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,699.32 |
| 24   | 5/22/2013  | Laboristas Ranch     | 20.6 | 0.555 | \$ 11.43    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,693.43 |
| 25   | 5/22/2013  | Cage Ranch           | 32.6 | 0.555 | \$ 18.09    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,700.09 |
| 26   | 5/27/2013  | 730a                 | 43.4 | 0.555 | \$ 24.09    | \$ 567.00    | \$740.00    | \$350.00 N/C | \$ 1,681.09 |
| 27   | 5/28/2013  | Mariposa Ranch       | 34.1 | 0.555 | \$ 18.93    | \$ 567.00    | \$740.00    | \$375.00 N/C | \$ 1,700.93 |
| 28   | 5/31/2013  | Chula Vista          | 10.8 | 0.555 | \$ 5.99     | \$ 567.00    | \$595.00    | \$375.00 N/C | \$ 1,542.99 |



|    |           |                     |      |       |          |           |          |              |             |
|----|-----------|---------------------|------|-------|----------|-----------|----------|--------------|-------------|
| 29 | 6/3/2013  | King Ranch          | 35.2 | 0.555 | \$ 9.54  | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,701.54 |
| 30 | 6/6/2013  | Labordas Ranch      | 17.2 | 0.555 | \$ 9.55  | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,691.55 |
| 31 | 6/18/2013 | Dos Palomas Ranch   | 39   | 0.555 | \$ 21.65 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,703.65 |
| 32 | 6/22/2013 | El Tulle Ranch      | 24.6 | 0.555 | \$ 13.65 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,695.65 |
| 33 | 6/27/2013 | Mariposa Ranch      | 22.4 | 0.555 | \$ 12.43 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,694.43 |
| 34 | 6/27/2013 | Villarreal Ranch    | 30   | 0.555 | \$ 5.55  | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,687.55 |
| 35 | 6/28/2013 | Tepeguaje Ranch     | 46.2 | 0.555 | \$ 25.64 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,707.64 |
| 36 | 7/3/2013  | Larry Dickey Ranch  | 20   | 0.555 | \$ 11.10 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,693.10 |
| 37 | 7/4/2013  | Larry Dickey Ranch  | 20   | 0.555 | \$ 11.10 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,693.10 |
| 38 | 7/4/2013  | Mariposa Ranch      | 35.6 | 0.555 | \$ 19.76 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,701.76 |
| 39 | 7/8/2013  | Mariposa Ranch      | 28.8 | 0.555 | \$ 15.98 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,697.98 |
| 40 | 7/9/2013  | Las Palomas Ranch   | 31.8 | 0.555 | \$ 17.65 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,699.65 |
| 41 | 7/15/2013 | Mariposa Ranch      | 34.1 | 0.555 | \$ 18.93 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,700.93 |
| 42 | 7/16/2013 | Mariposa Ranch      | 43.4 | 0.555 | \$ 24.09 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,706.09 |
| 43 | 7/17/2013 | Labordas Ranch      | 18.2 | 0.555 | \$ 10.40 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,692.10 |
| 44 | 7/19/2013 | West Ranch          | 20   | 0.555 | \$ 11.10 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,693.10 |
| 45 | 7/22/2013 | Cage Ranch          | 31.2 | 0.555 | \$ 17.32 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,699.32 |
| 46 | 7/24/2013 | King Ranch          | 50.4 | 0.555 | \$ 27.97 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,709.97 |
| 47 | 7/26/2013 | Mariposa Ranch      | 34.1 | 0.555 | \$ 18.93 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,700.93 |
| 48 | 7/28/2013 | Labordas Ranch      | 12.4 | 0.555 | \$ 6.88  | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,688.88 |
| 49 | 7/29/2013 | Mariposa Ranch      | 34.1 | 0.555 | \$ 18.93 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,700.93 |
| 50 | 7/31/2013 | King Ranch          | 43.9 | 0.555 | \$ 24.36 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,706.36 |
| 51 | 7/31/2013 | Los Federales Ranch | 45   | 0.555 | \$ 24.68 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,706.98 |
| 52 | 8/1/2013  | Tepeguaje Ranch     | 45.6 | 0.555 | \$ 25.31 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,706.98 |
| 53 | 8/7/2013  | Tepeguaje Ranch     | 46.2 | 0.555 | \$ 25.64 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,706.98 |
| 54 | 8/7/2013  | Mariposa Ranch      | 34.1 | 0.555 | \$ 18.93 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,700.93 |
| 55 | 8/7/2013  | Mariposa Ranch      | 41.2 | 0.555 | \$ 22.87 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,706.98 |
| 56 | 8/7/2013  | Cage Ranch          | 31.2 | 0.555 | \$ 17.32 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,699.32 |
| 57 | 8/8/2013  | Cage Ranch          | 31.2 | 0.555 | \$ 17.32 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,699.32 |
| 58 | 8/8/2013  | King Ranch          | 43.9 | 0.555 | \$ 24.36 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,706.36 |
| 59 | 8/9/2013  | Buena Suerte Ranch  | 41.8 | 0.555 | \$ 23.20 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,705.20 |
| 60 | 8/9/2013  | Contu Ranch         | 57.8 | 0.555 | \$ 32.08 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,705.20 |
| 61 | 8/15/2013 | Isabella Ranch      | 56   | 0.555 | \$ 31.08 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,705.20 |
| 62 | 8/15/2013 | Mariposa Ranch      | 34.1 | 0.555 | \$ 18.93 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,700.93 |
| 63 | 8/18/2013 | Jonas Ranch         | 34.6 | 0.555 | \$ 25.50 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,705.50 |
| 64 | 8/21/2013 | Poco Grande Ranch   | 27.2 | 0.555 | \$ 15.10 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,692.10 |
| 65 | 8/26/2013 | Madrigas Ranch      | 37.6 | 0.555 | \$ 20.87 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,707.87 |
| 66 | 8/25/2013 | Mariposa Ranch      | 27.8 | 0.555 | \$ 15.43 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,692.43 |
| 67 | 8/26/2013 | El Tulle Ranch      | 22.6 | 0.555 | \$ 12.54 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,691.54 |
| 68 | 8/28/2013 | Los Encinos Ranch   | 72   | 0.555 | \$ 39.56 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,846.96 |
| 69 | 8/29/2013 | Lasater Ranch       | 19   | 0.555 | \$ 10.35 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,697.55 |
| 70 | 8/30/2013 | Cage Ranch          | 31.2 | 0.555 | \$ 17.32 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,699.32 |
| 71 | 9/2/2013  | East Ranch          | 70   | 0.555 | \$ 38.85 | \$ 567.00 | \$740.00 | \$375.00 N/C | \$ 1,805.85 |

|    |            |                     |           |       |             |               |              |              |             |               |
|----|------------|---------------------|-----------|-------|-------------|---------------|--------------|--------------|-------------|---------------|
| 72 | 9/3/2013   | Jones Ranch         | 61.7      | 0.555 | \$ 34.24    | \$ 567.00     | N/C          | N/C          | N/C         | \$ 601.24     |
| 73 | 9/5/2013   | King Ranch          | 51.2      | 0.555 | \$ 28.42    | \$ 567.00     | N/C          | N/C          | \$1,500.00  | \$ 2,835.42   |
| 74 | 9/5/2013   | Cage Ranch          | 31.2      | 0.555 | \$ 17.32    | \$ 567.00     | N/C          | N/C          | N/C         | \$ 584.32     |
| 75 | 9/12/2013  | Cage Ranch          | 31.2      | 0.555 | \$ 17.32    | \$ 567.00     | N/C          | N/C          | N/C         | \$ 584.32     |
| 76 | 9/15/2013  | Jones Ranch         | 61.7      | 0.555 | \$ 34.24    | \$ 567.00     | N/C          | N/C          | \$1,500.00  | \$ 2,841.24   |
| 77 | 10/4/2013  | Cage Ranch          | 37.8      | 0.555 | \$ 20.98    | \$ 567.00     | N/C          | N/C          | N/C         | \$ 587.98     |
| 78 | 10/10/2013 | Tepeguaje Ranch     | 44.6      | 0.555 | \$ 24.75    | \$ 567.00     | N/C          | N/C          | N/C         | \$ 591.75     |
| 79 | 10/14/2013 | Cage Ranch          | 36.8      | 0.555 | \$ 20.42    | \$ 567.00     | N/C          | N/C          | \$1,500.00  | \$ 2,877.42   |
| 80 | 10/16/2013 | Isabella Ranch      | 56        | 0.555 | \$ 31.08    | \$ 567.00     | N/C          | N/C          | \$1,500.00  | \$ 2,838.08   |
| 81 | 10/22/2013 | Lasater Ranch       | 20.4      | 0.555 | \$ 11.32    | \$ 567.00     | N/C          | N/C          | \$1,500.00  | \$ 2,818.32   |
| 82 | 11/6/2013  | Williams Plant      | 22.2      | 0.555 | \$ 12.32    | \$ 567.00     | N/C          | N/C          | \$1,500.00  | \$ 2,819.32   |
| 83 | 11/26/2013 | Los Compadres Ranch | 42.4      | 0.555 | \$ 23.53    | \$ 567.00     | N/C          | N/C          | \$1,500.00  | \$ 2,830.53   |
| 84 | 12/6/2013  | Byington Ranch      | 28.8      | 0.555 | \$ 15.98    | \$ 567.00     | N/C          | N/C          | \$1,500.00  | \$ 2,822.98   |
| 85 | 12/7/2013  | Creek Rd            | 38.4      | 0.555 | \$ 21.31    | \$ 567.00     | N/C          | N/C          | N/C         | \$ 588.31     |
| 86 | 12/26/2013 | Laboritas Ranch     | 12        | 0.555 | \$ 6.66     | \$ 567.00     | N/C          | N/C          | N/C         | \$ 573.66     |
| 87 | 12/29/2013 | A & A Ranch         | 41.2      | 0.555 | \$ 22.87    | \$ 567.00     | N/C          | N/C          | N/C         | \$ 589.87     |
|    |            | 2013 TOTAL          | 3063.4    | 0.555 | \$ 1,700.19 | \$ 49,329.00  | \$52,265.00  | \$19,125.00  | \$33,000.00 | \$ 155,419.19 |
|    |            | TOTAL:              | 11,731.40 | 0.555 | \$ 6,510.93 | \$ 199,017.00 | \$221,520.00 | \$118,125.00 | \$83,000.00 | \$ 628,172.93 |

| Recovered Bodies 2009-2015 |      |      |      |      |      |      |      |
|----------------------------|------|------|------|------|------|------|------|
|                            | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
| January                    | 4    | 1    | 0    | 1    | 7    | 5    | 11   |
| February                   | 0    | 0    | 2    | 3    | 3    | 0    | 7    |
| March                      | 4    | 1    | 5    | 1    | 4    | 3    | 8    |
| April                      | 1    | 1    | 3    | 4    | 4    | 5    |      |
| May                        | 8    | 1    | 0    | 3    | 8    | 9    |      |
| June                       | 5    | 3    | 5    | 18   | 7    | 12   |      |
| July                       | 11   | 2    | 9    | 15   | 18   | 7    |      |
| August                     | 12   | 7    | 10   | 20   | 19   | 8    |      |
| September                  | 0    | 2    | 10   | 23   | 4    | 3    |      |
| October                    | 3    | 0    | 3    | 15   | 3    | 0    |      |
| November                   | 1    | 0    | 5    | 9    | 2    | 4    |      |
| December                   | 1    | 0    | 0    | 3    | 4    | 3    |      |
| Totals:                    | 61   | 20   | 65   | 129  | 87   | 61   |      |
| Grand Total                | 463  |      |      |      |      |      |      |





**STATEMENT FOR THE RECORD**

Bryan Costigan

Director, Montana Analysis and Technical Information Center  
Supervisory Agent  
Montana Department of Justice  
Division of Criminal Investigation  
Secretary, National Fusion Center Association

United States Senate  
Committee on Homeland Security & Governmental Affairs  
“Securing the Border: Assessing the Impact of Transnational Crime”

March 24, 2015

Chairman Johnson, Ranking Member Carper, thank you for inviting me to testify on this important topic. My name is Bryan Costigan and I am testifying today in my capacity as the director of the Montana Analysis and Technical Information Center (MATIC), one of 78 fusion centers in the National Network of Fusion Centers (National Network). Fusion centers bring together law enforcement, public safety, fire service, emergency management, public health, protection of critical infrastructure and key resources (CIKR), and private sector security personnel to understand local implications of national intelligence, as well as add state and local information and context to federal intelligence, thus enabling local, state, and federal officials to better protect our

communities. I also serve as Secretary of the Executive Board of the National Fusion Center Association (NFCA).

**Information Sharing and Analysis Regarding Threats in Montana and Along the Northern Border**

As my colleague Mike Sena, the president of the NFCA, indicated last month in testimony before the House Homeland Security Committee, our public safety, law enforcement, and intelligence communities have made dramatic progress over the past decade in analyzing and sharing information related to threats to the homeland. Information sharing on these threats - both criminal and terrorist in nature - has become more routine. Relationships have been developed and sustained across state and agency lines that are helping investigators solve crimes and prevent further crimes. Technology has given us better tools to support the process of analyzing and sharing threat information, and enhancing situational awareness during critical incidents. Federal support has been essential, including the assignment of intelligence officers and analysts from Federal partners, technical assistance, training and exercises, linkage to key information systems, grant funding, and security clearances. These tools add critical value to the resources committed by state and local governments to make the National Network a foundation of homeland security information sharing.

As Director of the Montana fusion center I can say that this improvement is evident on the Northern Border. While much of the country's attention is focused on the Southern Border, the vast expanse of our Northern Border presents countless opportunities for transnational criminal organizations and terrorist groups. Going forward, Congress should ensure that law enforcement and homeland security partners along the Northern Border at every level - including Border Patrol, Customs, Homeland Security Investigations, Immigration and Customs Enforcement, state, local, and tribal law enforcement - have resources adequate to meet the threats.

The State of Montana has 563 miles of border with Canada that spans two Border Patrol sectors and 15 ports of entry, including one in Glacier National Park. As long as I have been in law enforcement in Montana - more than 30 years - we have enjoyed a relatively strong culture of sharing resources among state, local, tribal, and Federal law enforcement agencies. It is not uncommon to have a variety of agencies responding to critical incidents along the border. There is an implicit understanding that each agency will support others. As this committee knows, it is often the cultural barriers to information sharing and coordination of analytical activities that prevent effective coordination. As I have had the opportunity to travel around the country as part of my responsibilities on the board of the NFCA, I have seen great improvements, but I also know there is much to be done. Leadership is the key ingredient in advancing the

effectiveness of our efforts. I am fortunate that my leadership in Montana - from Governor Bullock, Attorney General Fox, Division of Criminal Investigation Administrator Lockerby, and Investigations Bureau Chief Strandell - continually emphasize the need for collaboration to achieve our mission.

The Montana fusion center serves a focal point for information sharing among the many agencies that operate in the state. Within the center DHS is represented along with state and local agencies. The Joint Terrorism Task Force (JTTF) is located in the same state facility as the MATIC and that physical proximity enhances information sharing among agencies. In addition to our partners at MATIC we have shared information with the Border Patrol and Customs and Border Protection, as well as with Canadian agencies through CBP and Border Patrol partners at the Integrated Border Enforcement Teams (IBET). Our fusion center has completed joint products with DHS I&A, FBI, and CBP regarding issues that impact the border.

Drug trafficking organizations in Montana utilize well-established corridors that for the most part originate along the Southern Border. However, the rapid development of the Bakken shale oil region in Montana, North Dakota, and Saskatchewan has led to a major increase in illegal drug activity across our state. The oil boom has also brought a change in the players involved in drug trafficking through Montana. Previously, Montana-based organizations controlled much of the trade, and many Montanans would leave the state to procure larger drug quantities. Now we are seeing outsiders move into the trade to take advantage of the burgeoning population with more disposable income. A significant amount of methamphetamine used to be manufactured within Montana, but a combination of Federal and state policy initiatives and aggressive drug enforcement has caused a change in the illegal trade - over the past 10 years there has been a shift to smuggling finished meth from Mexico. Once rare in Montana, Mexican-sourced heroin is becoming more common as it competes with and beats in price the easily available opioid pharmaceuticals that are often the "gateway" to addiction. The majority of the non-marijuana illegal drugs in Montana utilize smuggling routes that originate in Mexico.

At the fusion center we are working with our state, local, and Federal partners including the Rocky Mountain HIDTA and other regional HIDTAs to analyze and understand these trends and provide information to support counter-drug operations. We are able to identify smuggling routes through coordination with investigators across the state by sharing analysis. In addition, access to reporting by federal agencies within classified and non-classified systems, reporting from HIDTAs such as Director Kempshall's, the Regional Information Sharing Systems (RISS), and other fusion centers is critical. Very recently DHS shared information with our fusion center regarding an organization smuggling narcotics from Mexico through the United States into Canada utilizing Montana Ports of Entry. Utilizing this information, we are able to reach to our

state and local law enforcement partners to educate them on the organization's tactics and improve the ability for them to share information back with us and our federal partners to address the threat.

Elsewhere along the Northern Border, the Ohio Strategic Analysis and Information Center (SAIC - the Ohio state fusion center) is the hub for coordination for the Ohio Northern Border Initiative Task Force. The task force's mission is to provide law enforcement support in collaborative efforts with border partners to detect, deter, and respond to threats to the security of Ohio's international border, coastline, and inland connected waterways. The task force also interacts regularly with the Northeastern Ohio Regional Fusion Center in Cleveland. All of the county leads on the task force hold secret clearances and attend monthly briefings in Columbus at the SAIC. The task force also interacts regularly with the New York State Intelligence Center (NYSIC - the New York State fusion center) regarding foreign flagged vessels that have also travelled New York waterways.

In Maine, the Maine Information and Analysis Center (MIAC - the Maine state fusion center) is engaged daily with federal partners on border security efforts. In fact, a CBP officer is assigned to the MIAC and works in the fusion center's space, so collaboration on joint efforts related to the Northern Border is occurring on a daily basis.

In 2012, a South Dakota law enforcement officer encountered two foreign nationals at a traffic stop who were in possession of over 100 stored value cards and a credit card reader. This raised suspicions because criminal organizations are known for stealing credit cards or credit card numbers and transferring money from them to stored value cards. Since CBP requires that individuals declare monetary instruments totaling \$10K or more to Port of Entry Officials, criminal elements exploit a vulnerability in border security by using stored value cards because they can hold as much value as the vendor will allow and are easy to hide. The South Dakota officer sent a report on the individuals and their vehicle to the South Dakota Fusion Center (SDFC). After conducting state and federal records checks in coordination with the North Dakota State and Local Intelligence Center (NDSLIC) and Federal partners at ICE, it was discovered that the individuals had ties to an active ICE transnational organized crime money laundering investigation involving stored value cards. It was also discovered that the individuals had previously unknown ties to North Dakota, Washington, and Florida. Through this collaboration, the SDFC and NDSLIC were able to provide previously unknown information about the individuals to ICE to further support their investigative efforts.

In Michigan, the Michigan Intelligence Operations Center (MIOC - the Michigan state fusion center) coordinates with CBP, Border Patrol, and HSI on a regular basis to provide information and analysis pursuant to requests related to border threats. Recently, police in Windsor, Canada notified the Detroit Police Department that the Detroit/



Windsor tunnel would be shut down in both directions due to explosive devices found inside a vehicle. Multiple fireworks, knives, and other weapons were found and two male U.S. suspects were referred for secondary inspection by CBP. Analysts at the Detroit and Southeast Michigan Information and Intelligence Center (DSEMIIC - the regional fusion center in Detroit) assisted by providing complete work-ups for both suspects and provided the information to Border Patrol, DHS, and the Detroit Police Department, and the suspects were subsequently arrested.

Earlier this year CBP received information regarding a port runner into Canada. The subject's name and description was provided to DSEMIIC analysts, who provided a driver's license photo to assist law enforcement in locating the suspect. The suspect was apprehended by Windsor Police through a coordinated effort by DSEMIIC, CBP, Canadian Border Services Agencies, and Windsor Police. Last year, DSEMIIC analysts assisted the HSI BEST Detroit division on an Ecstasy smuggling ring from Windsor, Canada into the U.S. by providing vital records information, bridge cards, and affiliates of a total of 13 subjects. Analysts were able to identify associates of the subjects possibly involved in drug trafficking between Windsor and the U.S.

These stories are just a few examples from the Northern Border region of how fusion centers are serving as focal points for state and local analytic resources to support a variety of Federal Homeland Security missions beyond terrorism. Fusion centers regularly support DHS component agency investigative activities and on many occasions support disaster operations such as during Super Storm Sandy. Fusion centers routinely provide analytic support and information to United States Secret Service and HSI investigations into matters such as the proliferation of fraudulent Resident Alien Cards. My fusion center in Montana recently participated in a multi-state joint analytical effort with CBP regarding fraudulent drivers licenses, which can facilitate a range of criminal activity with obvious implications for border security. It is critical for Congress to recognize that fusion centers support the full spectrum of Homeland Security missions at the state and local level. Some DHS component agencies currently have personnel assigned to some fusion centers, and that level of engagement enhances information sharing and analytic collaboration. Border security is one of those Federal missions where fusion centers could be more effectively utilized to coordinate state and local resources to further enhance what is inherently a Federal responsibility.

#### **The National Network of Fusion Centers**

Thanks to strengthening partnerships across jurisdictional lines, we are sharing *more* information *more effectively* than ever before through fusion centers about a range of threats. This is happening despite the fact that no single entity has the authority to enforce effective information sharing practices. Because of the decentralized nature of

public safety in America, policies on sharing information - including information on threats that are related to our borders but are not stopped at the borders - cannot be dictated by any one organization. Common policies and practices have been developed by consensus through multilateral and interagency policy bodies - including the Global Justice Information Sharing Initiative (Global) and the Criminal Intelligence Coordinating Council (CICC) and must be continually reinforced through day to day engagements between Federal, state, and local partners. As you might imagine, this is extraordinarily difficult to achieve in practice, but we have made excellent progress and are continuing to build on that progress.

But we must work every day to overcome challenges related to jurisdiction, culture, security clearance levels, and information access if we want to continue to make progress. In my capacity as a board member of the National Fusion Center Association I am part of discussions nearly every day with my fusion center colleagues, our federal partners including the DHS Office of Intelligence & Analysis, our counterparts in other public safety disciplines, and with private sector stakeholders to develop stronger processes and build stronger relationships. With the active support of this committee and the rest of Congress and our state legislatures, we must continue our commitment to a true nationwide information sharing enterprise with the National Network of Fusion Centers as a centerpiece and build on the success we have achieved to date.

Over the past several years, the state and local share of budget resources allocated to fusion centers has grown substantially - state and local governments provided over half of all funding for fusion centers in FY 2014. Yet Federal funding support through FEMA Preparedness Grants - SHSGP and UASI - remains critically important. The NFCA has joined other law enforcement associations on a letter to Congress urging that the Law Enforcement Terrorism Prevention Activities (LETP) requirement in the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) be strengthened. The law requires that 25% of SHSGP and UASI funding be used for "law enforcement terrorism prevention activities" and specifies some of those types of activities including support for fusion centers. While states have latitude to allocate funding according to risk and priorities, we agree with the intent of the 2007 law and believe that terrorism prevention activities should be constant priorities, especially as grant funds have declined over the past five years. The Government Accountability Office (GAO) found in its November 2014 report on information sharing and fusion centers that in 2012 states inaccurately categorized about \$60 million in projects as "related to fusion centers" when in fact those funds did not support fusion centers. As we have suggested in our letter to Congress, requiring a governor-designated state law enforcement executive to review the LETP portion of grant plans would help to ensure those funds truly support terrorism prevention activities.

A common misconception that is often repeated in news stories and in advocacy papers is that fusion centers are “DHS fusion centers”. This is simply not true: DHS does not exercise operational control of any fusion center. State and local governments own and operate fusion centers, and we collaborate closely with DHS, the Department of Justice, and other federal agencies to facilitate wider analysis and sharing of threat information. Each governor designates a primary fusion center in each state. Together with other recognized fusion centers, these centers comprise the National Network of Fusion Centers. The national network is a decentralized, distributed network of analysts, public safety partners, and in a growing number of cases CIKR and private sector partners. Most centers have representation from DHS and in some cases the FBI and other Federal investigative agencies. This organizational structure allows for each center to be directed according to the priorities of its agency sponsor, while maintaining a direct upward and downward link to national counterterrorism intelligence. This is squarely in line with what the 9/11 Commission called for in its report.

Since fusion centers are owned and operated by state and local entities, there is wide variation among the centers in terms of budget and capabilities. Fusion center priorities in San Francisco are different from priorities in New York State and from our center in Montana. The interests are different because their populations, critical infrastructure, and threats are different, and the fact that they are free to address the issues they feel need to be addressed is a real strength of the national network of fusion centers.

The first of two common threads through all the centers – and the key Federal interest – is a link to Federal partners and to each other through information sharing mechanisms. The Critical Operational Capabilities (COCs) that are maintained (and measured through an annual assessment process facilitated by DHS) in each center ensure the centers are ready and able to support homeland security missions regardless of their local priorities.

Of central importance is the access each center has to local, regional, and state sources of information - public safety records, criminal intelligence databases, and personal relationships across communities - that allow the center to add local and regional context to national intelligence, as well as provide information and value-added intelligence to support counterterrorism and other criminal investigations that would otherwise be difficult or unlikely for lead Federal investigative agencies to obtain. Also critically important from the national perspective is that each fusion center has methods of distribution across local, regional, and statewide technical and personal networks that Federal investigative and intelligence agencies could not possibly build or maintain.

Thus, the dual value proposition of the National Network of Fusion Centers is that no other organizational structure can provide faster or more efficient access to state and local information that may support counterterrorism or other investigations, or enable

faster or more efficient situational awareness across relevant jurisdictions. Refining the processes that allow this to happen is an ongoing priority.

The second of the two common threads through all centers is a focus on vigilantly protecting against infringements of citizens' privacy, civil liberties, and civil rights. Fusion centers are part of a much larger domestic protection enterprise whose mission is safeguarding the American people - including our ability to exercise Constitutional rights and be free from unwarranted government intrusions in our lives. Privacy protections are not an afterthought for the NFCA, the National Network, or our Federal, state, and local partners. In fact, the first order of business last year during the development process of our national strategy was to address privacy, civil liberties, and civil rights. That is why it is literally Goal Number 1 in the strategy: "Uphold public confidence through the safeguarding of information and the protection of the person and the privacy, civil rights, and civil liberties of individuals." We cannot achieve our collective mission without the public's trust and confidence.

All fusion centers have strong publicly available privacy policies in place, we train our people on them, and we emphasize transparency. Privacy policies have been established across all 50 States and all operational fusion centers at least as comprehensive as the Information Sharing Environment (ISE) Privacy Guidelines. Training has occurred for more than 200,000 local, tribal, state, and federal front line officers to identify and report suspicious activity in accord with the ISE Suspicious Activity Reporting (SAR) Functional Standard, and several thousand analysts have been trained in accord with vetting guidelines to ensure that ISE SARs are demonstrably behavior-based and their handling (retention, redress, and other related considerations) is fully compliant with privacy policies. The very first initiative in our strategy relates to training and education for law enforcement and public safety partners on fusion centers' role in the protection of privacy, civil rights, and civil liberties. The strategy's second initiative relates to conducting assessments on the impact of certain technologies on privacy, civil liberties, and civil rights of citizens, and developing policies to mitigate any impact *prior* to procurement. We look to the Technology Policy Framework published by the IACP in January of 2014 to support these efforts.

Counterterrorism analysis and information sharing functions are components of the fusion center mission but they are not - and they should not be - the sole components. That is because our fusion centers report to governors, state law enforcement executives, county, and municipal public safety leadership. They do not report to the Federal government, nor should they. The vast majority of fusion centers including ours in Montana are "all-crimes" centers, which reflects the fact that criminal intelligence analysis, data sources, interagency relationships, and information sharing capabilities resident in the centers are useful for all types of investigations - not just terrorism. While the Federal interest in fusion centers relates primarily to their ability to contribute to

counterterrorism efforts, the reality is that the fusion process is effective for any public safety effort. Case in point is the discussion we are having today - certain transnational organized criminal groups may not be linked to terrorism, but those groups pose an even more direct threat - and impact - to American citizens every day. Whether the crime is terrorism, child abduction, gang violence, drug trafficking, or oil field theft, the fusion process maximizes efforts to prevent, deter, or investigate the crime. Institutionalized collaboration through information sharing and co-location is effective no matter the nature of the crime. Our Federal partners benefit from the all-crimes approach because it amounts to "drilling" on real-world scenarios using the fusion center critical operational capabilities every day. When a terrorism threat emerges, fusion center participants and customers "know the drill."

We are still often asked about the difference between fusion centers and JTTFs. To be clear: JTTFs are federally run investigative bodies that support the FBI's unique mission to investigate terrorism threats in this country. Fusion centers play a much different role; they're not only information sharing hubs in states and metropolitan regions. Fusion centers are where we train a cadre of terrorism liaison officers (TLOs), including police officers, firefighters, EMS workers, and our private sector partners on indicators and warnings of terrorism. Fusion centers have the ability to catalogue critical infrastructure in each state and region and analyze incoming suspicious activity reports (SARs) against the national threat picture and against what we know about our critical infrastructure. We have the ability to then rapidly share information and intelligence among the entire National Network and with the FBI. But often that SAR information has no nexus to terrorism. It's about drug dealing or gang activity or firearms trafficking or mortgage fraud. So the all-crimes approach mentioned above gives us the ability to analyze that information and funnel it to the right place. And we know that, sometimes, information that at first blush appears to be criminal in nature -- the Torrance, California gas station robberies, the smuggling of cigarettes in North Carolina, the sale of pseudoephedrine in California -- actually is linked to terrorist activity.

It does not make sense to try to separate crime and terror in our daily work of analyzing threat information and criminal activity. We have to knock that wall down. If we're going to continue to improve, we have to understand that the sharing of information makes communities safer. Our ultimate goal is to prevent terrorism. But in every community across the country there are violent crimes that terrorize neighborhoods and families and affect lives and businesses every day. Fusion centers are uniquely situated to do things that JTTFs or no other program can do. We can bring together disparate resources, data sets, analytical perspectives, and personnel in order to analyze and share information on terror, crime, or other threats to public safety. We can make sure that JTTFs get the information they need from state and local partners, but that the DEA and CBP and HSI and chiefs and sheriffs and governors get the information they need about non-terrorism public safety threats as well.

**National Strategy for the National Network of Fusion Centers, 2014-2017**

In July of 2013, the House Homeland Security Committee released a report titled “Majority Staff Report on the National Network of Fusion Centers.” It reflected the painstaking work of several committee staff who visited more than 30 fusion centers across the country and met with dozens of federal, state, and local fusion center partners. The findings of this report contrasted significantly with a 2012 report from this committee’s Permanent Subcommittee on Investigations that was highly critical of fusion centers. Among the key findings of the House committee’s 2013 report was an acknowledgement that “the National Network is a National asset that needs to realize its full potential to help secure the Homeland.” The report also recognized the direct impact of fusion center information sharing on terrorism investigations by noting that according to information provided by the FBI and DOJ, between December 2008 and December 2012, “176 SARs [suspicious activity reports] entered by fusion centers into the eGuardian or Shared Spaces SAR databases [...] resulted in the FBI opening new terrorism investigations.” “Additionally, 289 Terrorist Watchlist encounters reported by fusion centers enhanced existing FBI cases.” The level of productivity mentioned in the 2013 House report has increased since it was published. In the one-year period between August 2013 and July 2014, 238 SARs submitted by fusion centers supported FBI investigations. When I hear people question the value of fusion centers to federal counterterrorism efforts, I point them directly to these statistics. The value of fusion centers to homeland security efforts is clear.

In late 2013 the NFCA formed a working group comprised of law enforcement and other public safety groups, emergency management, and the National Governors Association, and dedicated hundreds of hours to developing a strategy to shape the continued maturation of the National Network of Fusion Centers. The resulting work - the National Strategy for the National Network of Fusion Centers 2014-2017 - was published in July of 2014. The strategy can be found at our website: [www.nfcausa.org](http://www.nfcausa.org).

The strategy objectives and priority initiatives are now driving efforts to improve analysis and sharing around all types of threats, and this will lead to enhanced collaboration in addressing border-related transnational organized criminal threats. It is an ambitious strategy - we specified 37 initiatives that advance each of the strategy’s four goals. The strategy development process was just the beginning. While several initiatives are already well underway, we are in process of developing an implementation plan that to prioritize our actions through 2017 to achieve objectives under the strategy. In addition to our national strategy, we worked with DHS Intelligence & Analysis, the FBI, and other members of the Information Sharing and Access Interagency Policy Committee (ISA-IPC - the federal interagency forum that oversees the planning and implementation of the Information Sharing Environment) to support their development of

a Federal “Engagement Strategy” which is fully complementary with our strategy. Working together with our Federal partners, we identified a dozen initiatives that will be joint priorities over the next several years. For the first time, there is a clear Federal strategy that directly supports the state and locally driven National Network.

Central to that support is our ongoing engagement with the DHS Office of Intelligence and Analysis. The National Network continually relies on our partners at I&A. The support provided by I&A personnel assigned to fusion centers is critically important. I&A Undersecretary General Frank Taylor and his staff have invested considerable time and effort in determining the best path forward for I&A’s deployment of personnel in the field. They have regularly interacted with the NFCA and sought our input along with that of our state and local partners. Unfortunately, the Intelligence Authorization Act of 2014 constrained I&A’s choices through limiting language in the classified annex to the bill - a move that was made by the Intelligence Committees without consulting any fusion center directors or other state and local stakeholders impacted by the decision.

The impact of the new I&A field deployment plan won’t be known until the changes are in place, but there is concern across the National Network about what it will mean for fusion center connectivity to certain classified systems and information that is essential to sharing threat intelligence with state and local law enforcement and other public safety partners. One of the primary objectives in the fusion center strategy is enhancing analytical collaboration in the field. Limiting I&A presence in fusion centers threatens to inhibit that collaboration, including with regard to border-related transnational criminal threats.

As NFCA President Mike Sena testified on the House side last month, every fusion center should have an I&A intelligence professional with the authority to collect and share raw information to include release authority, execute joint production, and effectively share information across all classification levels. Decisions regarding the appropriate type of intelligence professional for each fusion center should be the result of discussions between those state and regional fusion centers and I&A.

In addition to the assignment of personnel, DHS provides important training opportunities for analysts in fusion centers. In particular, DHS facilitates the delivery of specialized analytic seminars focused on specific threat topic areas such as gangs, drugs, and borders for fusion center analysts. The seminars bring together a diverse range of state and local subject-matter experts (SMEs) and partner agencies/organizations from all levels of government to inform analytic efforts. These seminars provide a welcome opportunity for fusion center and federal analysts to discuss emerging threats, trends, and patterns and collaborate on joint products and best practices. Montana has benefited from attending these seminars both as a trainee and a SME.

**Technology Policy Challenges Impacting Law Enforcement's Ability to Share Information to Detect, Prevent, and Investigate Threats**

To *share* information we have to *have* it in the first place, as well as mechanisms to *communicate* it across the public safety enterprise. Tips and leads - "see something say something" - from members of the public, police officers, sheriffs' deputies, and Federal agents are one very important source of such information. In the 21st Century, technology applications are increasingly important sources of valuable information. Just as the private sector in America is continually adopting new methods of generating useful information and communicating with one another via new technologies, American law enforcement and public safety at all levels must adopt the latest technological innovations in order to adapt to increasingly sophisticated criminals - especially criminal organizations and terrorist organizations that are operating and communicating across national borders with much more freedom than ever before.

The use of technology by law enforcement and intelligence agencies also comes with important limitations, restrictions, checks, and balances that the private sector does not have to deal with. That slows down our ability to adopt technology and tap its full potential, but we understand why. We in law enforcement fully appreciate that these restrictions are rooted in the Constitution that grants all of us our sacred freedoms. We abide by the laws, policies, and regulations that help to give the public confidence that its government is respecting privacy, civil rights, and civil liberties as it carries out its mission of protecting people and finding perpetrators when crimes are committed.

We get concerned, however, when policies threaten to completely eliminate or render minimally useful our adoption of new technology or access to data. We have a responsibility to share our informed perspectives with policymakers to help understand the implications of policy decisions on our ability to investigate crimes or generate intelligence that can help prevent crime or terrorism. The thing we fear is knowing - in the aftermath of a deadly event - that we could have had access to information to prevent or identify a threat ahead of time, but a law or policy prevented our timely access to it. We currently adhere to all the requirements of 28 CFR Part 23 regarding data retention and other issues, and we are used to taking measures like these. We expect it. But we believe it is important to understand the implications of adding new restrictions without fully considering the implications on our ability to share information.

Today we are dealing with several of these types of issues: the "going dark" challenge that renders warrants for communications intercepts useless; device encryption issues that prevent the gathering of either incriminating or exculpatory evidence after a crime has occurred; automated license plate recognition (ALPR) technology provides



investigative leads with anonymous data, but is being severely restricted in some areas with short data retention policy mandates and is even prohibited in other areas. Policy decisions on these and other issues will have an impact on our ability to generate and share information to detect, prevent, and investigate crime and terrorism - including along our national borders.

Technology is also how we enable fast, efficient sharing of information across jurisdictions. In Montana and across the National Network of Fusion Centers we have embraced technology to assist us in the gathering, analysis and dissemination of information. After the critical shooting incidents in Newtown, Connecticut, the Aurora Theater and the Sikh Temple in Wisconsin, to name just a few examples, fusion centers worked to enhance our ability to share timely and accurate information across the entire the National Network in a real-time environment. Working with Homeland Security Information Network (HSIN) staff at DHS, the Situational Awareness Room or "SitAware" was developed. This communications resource is now utilized routinely by the network and other public safety partners during planned and critical events. It has been used to coordinate information sharing among the National Network and our partners in such events as the Boston bombings, the Super Bowl, and national elections. More recently the SitAware concept has been replicated by the National Network to facilitate better real-time information sharing regarding cyber threats. The Cyber Information Network Awareness Room or "CINAware" has been established through HSIN to assist in responding to emerging cyber threats. Neither of these important efforts could have been possible without the support of DHS. We must continue to support the development and enhancement of technology to improve the availability, dissemination, and coordination of information to fusion centers and our partners.

### **Conclusion**

Chairman Johnson and Ranking Member Carper, thank you on behalf of the Montana Department of Justice and the Montana fusion center for inviting me to testify today. My colleagues in fusion centers across the country are happy to be a resource for you and your staff as you consider how to continue effectively supporting strong collaboration among those of us who protect our fellow citizens.

Submitted by Sen. Johnson





COMMUNITY EDUCATION CENTER • IMMIGRATION POLICY CENTER • INTERNATIONAL EXCHANGE CENTER • LEGAL ACTION CENTER

**STATEMENT OF THE AMERICAN IMMIGRATION COUNCIL**

**SUBMITTED TO THE U.S. SENATE HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS COMMITTEE**

**HEARING ON "SECURING THE BORDER: ASSESSING THE IMPACT OF  
TRANSNATIONAL CRIME"**

**MARCH 24, 2015**

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The American Immigration Council is a non-profit organization which for over 25 years has been dedicated to increasing public understanding of immigration law and policy and the role of immigration in American society. We write to share our analysis and research regarding the nature of "border security," and how border security relates not only to transnational crime, but to unauthorized immigration and immigration reform.

As described in the American Immigration Council's series of papers, "How to Fix a Broken Border," authored by former Arizona Attorney General Terry Goddard (Attachments A, B, and C), decoupling immigration from border security is important. Achieving true border security means focusing less on unauthorized immigrants and more on the dangerous criminal cartels that are smuggling drugs and people into the country, and money and guns back out. Goddard recommends federal actions to target cartel money, close money-laundering loopholes, pursue cartel leaders, and focus on border security at ports of entry. For the unauthorized immigrants already in the United States, Goddard argues it makes more sense to bring them out of the shadows and give them legal status, so they are no longer as easily exploited by the cartels.

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We urge Congress to pursue border security measures that target criminal cartels rather than the unauthorized border-crossers they exploit. We also urge Congress to work towards a comprehensive reform of our broken immigration system that meets our needs and reflects our proud history as a nation of immigrants.

[www.americanimmigrationcouncil.org](http://www.americanimmigrationcouncil.org)

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ATTACHMENT A



HOW TO FIX A BROKEN BORDER:  
**HIT THE CARTELS WHERE IT HURTS**

PART I OF III

By Terry Goddard

SEPTEMBER 2011

## HOW TO FIX A BROKEN BORDER: HIT THE CARTELS WHERE IT HURTS

### PART I OF III

BY TERRY GODDARD

SEPTEMBER 2011

#### ABOUT PERSPECTIVES ON IMMIGRATION

The Immigration Policy Center's *Perspectives* are thoughtful narratives written by leading academics and researchers who bring a wide range of multi-disciplinary knowledge to the issue of immigration policy.

#### ABOUT THE AUTHOR

**Terry Goddard** completed his second and final term as Arizona's Attorney General in January 2011 and has reentered the private practice of law. A native of Tucson, Arizona and graduate of Harvard College, he was first elected Arizona Attorney General in 2002. Over 8 years in office, he focused on protecting consumers and fighting the organized criminal activities of the drug cartels. He made significant progress in attacking cartel money laundering, seizing approximately \$20 million and culminating in an historic \$94 million settlement with Western Union in February, 2010. He received the Kelly-Wyman Award for 2010, the top recognition given by his fellow Attorneys General. Terry's first job out of ASU law school in 1976 was prosecuting corporate fraud. During his legal career, he has handled a wide variety of cases from a challenge to a federal highway route to election law matters before the state Supreme Court. Before law school, he served on active duty in the Navy, retiring as a commander after 27 years in the Reserves. Mr. Goddard is currently teaching at Columbia Law School in the Attorney General Project and a graduate course entitled "The Art of Public Decision Making" at Arizona State University School of Public Affairs. He has been selected a Wasserstein Fellow at Harvard Law School and is a Senior Fellow at the American Immigration Council. Terry lives in Phoenix with his wife Monica and teenage son.

#### ABOUT THE IMMIGRATION POLICY CENTER

The Immigration Policy Center, established in 2003, is the policy arm of the American Immigration Council. IPC's mission is to shape a rational conversation on immigration and immigrant integration. Through its research and analysis, IPC provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy on U.S. society. IPC reports and materials are widely disseminated and relied upon by press and policymakers. IPC staff regularly serves as experts to leaders on Capitol Hill, opinion-makers, and the media. IPC is a non-partisan organization that neither supports nor opposes any political party or candidate for office. Visit our website at [www.immigrationpolicy.org](http://www.immigrationpolicy.org) and our blog at [www.immigrationimpact.com](http://www.immigrationimpact.com)

## Introduction

Both sides of the immigration debate agree that our southwest border is “broken,” but they have very different views as to why or how to fix it. On one side, immigration reform advocates point to a broken immigration system that forces immigrants into the hands of increasingly violent smugglers in order to make the trip to the United States. This side of the debate seeks to improve border security by taking border crossers who seek legitimate work out of the flow of unauthorized immigrants. But the opponents of immigration reform argue that we can’t act on reform until we first “secure the border.” The Obama Administration seems to have accepted this argument, ramping up spending on border enforcement and deporting record numbers as a down payment on immigration reform at some unspecified time in the future.

As the Attorney General of Arizona, I have been part of law enforcement on the southwestern border for most of the past decade. My office confronted border crime on an almost daily basis. From that view, it is clear that much of the “secure the border” debate is nonsense. Again and again, symbols trump reality, misinformation buries the truth. Programs like building a bigger border wall or enlisting police in the local enforcement of immigration laws are sold as ways to make the border more secure. They will not. In the latter instance, the “cure” could actually make the crime problem worse. Equally misguided is the idea that a force buildup alone can keep the border secure in the face of increasingly sophisticated smuggling organizations—the cartels.

Since improved border security is a common denominator in the immigration debate, both sides should be anxious to know what actually works. This paper is based on the assumption that sincere parties on both sides want to go beyond the rhetoric and the symbols. I believe a more effective border defense is possible, but not on the present course. Not by the Administration’s defense-only buildup of Border Patrol and National Guard on the border, and not by the huge investment in bricks and mortar or the quasi-military responses proposed by the Administration’s critics.

A more effective border strategy starts with the money; the torrent of cash pouring across the border into the cartel pocketbooks. Cartels are, first and foremost, business enterprises.<sup>1</sup> Sophisticated cartel organizations are formed not for any lust for power or to employ the bosses’ relatives, but because they maximize profits. Cartel agents do not threaten, terrorize, and kill because they love the work, or out of religious zeal. They do it because they are very well-paid. So, go after the money. Taking away the profit cripples the organization. Conversely, as long as the money from drug sales and human smuggling—which may total more than \$40 billion a year<sup>2</sup>—flows to the cartels, the violence in Mexico, the sophisticated smugglers crossing our border, and the perception that nothing is being done to defend the border will continue.

We can also do a much better job of taking the fight directly to the drug cartels using the full arsenal of law-enforcement methods. We can significantly reduce the number of illegal crossers and the amounts of illegal drugs smuggled, as well as the violence in Mexico. The answers are straightforward; the mystery is why they have not been taken up long ago.

### How Do We Define “Success”?

We in Arizona know something about border problems. Roughly 380 miles of the 2,000-mile border with Mexico are in our state. The most rugged terrain of the whole 2,000 miles is in the Tucson Sector of the Border Patrol. With intensified border enforcement in California and most of Texas, Arizona has become the primary corridor for the smuggling of drugs, guns, money, and people. In the last few years, Arizona has emerged as the poster child for ineffective border defenses.

From my first days as Arizona’s Attorney General, I found it astonishing and frustrating that, in the face of the huge smuggling problem, many of the steps law enforcement would normally take to fight crime, especially organized crime, were not being taken. Before spending billions on border security, my law-enforcement colleagues would first identify what threat is being defended against, decide how best to confront that threat, and estimate how much effort is needed to succeed. They would set clear goals so they could tell whether or not their strategy is successful. In short, before setting up a border defense, they would heed the words of Robert Frost’s poem, “Mending Wall,” and determine exactly “What I was walling in or walling out...”

*...in the face of the huge smuggling problem, many of the steps law enforcement would normally take to fight crime, especially organized crime, were not being taken.*

That has not happened. A clear objective—a precise statement of what we are walling out—was the first casualty in the post-9/11 border security buildup. It is often stated that our border security response is “risk based.” But it is far from clear what risk is being guarded against. What started as a mission to prevent terrorists from entering the country has morphed into preventing all illegal crossers from entering, including the thousands seeking work. Then it became a fight against drug smuggling by the international cartels, and—most recently—an effort to stop the spread of violence from Mexico.

What is appropriate border strategy depends on the threat we are fighting. The tactics and strategies to confront one threat may not work against others. No defense can be effective against every threat simultaneously. But, since the Obama Administration has been unwilling to state exactly what threat it is defending against, critics have enjoyed a field day decrying each Administration action as a “failure,” without having to be specific themselves. Last summer, every Administration border announcement was greeted by a chorus of “it’s not enough.”<sup>3</sup> But no one asked the obvious question, “enough to do what”? The Administration protests, rightly, that the goal posts are continually being moved, yet they do not define where those posts should be.

Although relatively recent as a border concern, much of this country and Congress have begun to focus on the organized criminal organizations that smuggle massive amounts of drugs and people into the United States, and guns and money into Mexico. Despite the significant buildup of U.S. border defenses and the courageous efforts of the Calderón Administration, the drug



cartels have been spectacularly successful in their cross-border criminal activities and have taken over much of the civil authority in parts of Mexico. Their obvious successes moving contraband across the border gives added credibility to “broken border” proclamations.

Many Americans also have become concerned, bordering on hysterical, about the wave of cartel-related violence in Mexico. This is no fear of phantoms. An estimated 45,000 people have died since President Calderón began an all-out assault on the drug cartels over four years ago.<sup>4</sup> Some killings have been singularly gruesome, with victim beheadings a cartel signature. Although the north side of the border has remained relatively safe, many in this country are convinced that the violence is already sweeping into the United States.

Without agreed-upon indicators to measure border-enforcement efforts, it is impossible to say whether they are succeeding or failing. The Obama Administration makes fulsome claims that they are creating a “21<sup>st</sup> Century Border,”<sup>5</sup> but what does that mean? Presumably, a 21<sup>st</sup> Century Border is one that keeps criminals out, while permitting the vigorous flow of legitimate commerce. Unfortunately, according to many long-time border residents, the tactics being used today have the opposite effect. They disrupt and, in some cases, destroy commerce, while the effect on criminal activity is negligible.

Since no terrorists have been apprehended on the southwest border, our border-security efforts against the terrorist threat are either a total success or a total failure. Either border defenses missed every terrorist or deterred them all! It would be unfair to attribute the continued decline in the street prices for marijuana, heroin, cocaine, and meth to the current border-enforcement effort, since efforts to choke off the flow of illegal drugs have been failing for decades. Perhaps the greatest border success has been the low rate of violent crime on the U.S. side of the border. However, to my knowledge, crime suppression in border communities has never been a declared border goal, and no one gives Homeland Security credit for it anyway. In fact, many Americans believe that the border region is a free-fire zone.

DHS recently proclaimed that its border-security efforts have been successful because fewer illegal crossers are being caught. I will put aside the apparent illogic that the huge buildup of forces and technology has produced fewer arrests. Before the reduction in the number of illegal crossers arrested can be used as a valid indicator of success, DHS must prove that there were fewer actual attempts to cross illegally, and that those who attempted the trip were not just better at avoiding apprehension. An impossible task. We must also consider the impact of the reduced number of jobs available to immigrants in the U.S., and the strengthening of the Mexican economy, before accepting the decline in arrests as proof of effective deterrence.

More fundamentally, when did the number of illegal crossers arrested become the best indicator of border success? The view from Arizona is that the illegal crossers are a symptom of a much more serious disease, not the disease itself. Most people would never attempt to cross the treacherous desert in the Tucson Sector of the Border Patrol without criminal assistance. The sophisticated network of scouts, drivers, guards, drop houses, transportation equipment, and intelligence gatherers who monitor the Border Patrol and other law-enforcement agents are what make movement across the border possible. If anyone tries to cross the Arizona

border without the help of a criminal enterprise, they will be quickly arrested or join the hundreds who have perished in that parched and treacherous desert. In short, without the legions of cartel agents and subcontractors who service every mile of the route across the border and into destinations in the United States, illegal entry becomes far more difficult—or impossible.

***Until the cartels  
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The problem is not the crossers, but the criminal organizations that make their crossing possible. In the face of heightened border enforcement and treacherous terrain, they get their “cargo” across the border. The arrest and deportation of those who make it across simply gives the cartels more customers. Heightened border security means the cartels charge more for the trip. Plus, thousands of arrests give the false impression that something is being done to reduce border crimes. Whether arrests are up or down is inconsequential as long as the cartels are in operation. Until the cartels are eliminated, the border cannot be considered secure. Period.

### **Targeting the Cartels—and Their Money**

Any serious border defense must go after the cartel’s money, but that is not happening. Only recently have southbound, bulk cash shipments—shrink-wrapped bales of \$100 bills—been seized by DHS in any quantity. But, the spectacular seizures reported are a drop in the bucket of cross-border transfers. The main culprit is not DHS or the Department of Justice; it is the U.S. Department of the Treasury. Treasury officials who observe and regulate the international movement of currency remain unwilling or unable to go after money laundering across the Mexican border. For years, they ignored the hundreds of millions of dollars that were wire transferred to pay for human smuggling. In spite of concerns raised by Congress and by parts of Treasury itself, “stored value instruments” can still be taken across the border regardless of the amount of cash stored on them.<sup>6</sup> Moreover, “funnel” accounts in major banks have moved billions of dollars illegally across the border. Yet when money-smuggling crimes have been uncovered, the perpetrators walk with no criminal penalties. Apparently, in Treasury’s view, allowing billions of dollars to flow into the cartel bank accounts is merely a technical violation of the law and not a deadly serious enterprise affecting the lives of tens of thousands on both sides of the border.

By not stopping the money from illegal enterprises flowing across the border, one thing is sure; the cartels will continue to have the resources to attack the border successfully. By not moving aggressively against illegal money transfers across the border, this country is literally providing our enemies the resources to continue operating at a level of organizational and technological sophistication that is almost unstoppable.

As Arizona’s Attorney General, I focused on cartel money transfers. Rather than wait for federal action, Arizona established the most robust and innovative state program in the nation. We were successful in driving hundreds of millions of dollars of proceeds from illegal activity out of our state. Through extended litigation, I forced reforms in the wire transfer industry so that the

virtually anonymous transactions which paid for much of the human smuggling in the past are no longer available. One state acting alone did a lot.

Unfortunately, the cartels have the whole 2,000-mile border to pick on. They simply shifted their money laundering operations away from Arizona in response to our prosecutions. Human smuggling into this country continued. Now, as a result of our settlement with Western Union in February 2010, the data on wire transfers along the entire southwest border is available to law enforcement. The Arizona successes can now be taken nationwide, if there is the will to do so. Last year, the U.S. Government Accountability Office (GAO) recommended a careful study of what we did in Arizona for implementation by DHS.<sup>7</sup> It remains to be seen if the federal authorities will use this data treasure trove to uncover criminal operations along the border.<sup>8</sup>

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“Trade-based” money laundering and black market peso exchanges appear to be on the increase. The cartels are subcontracting with a virtual cottage industry of financial experts in the U.S.—people who make the illegal movement of money resemble legitimate international transactions. Transfers are broken down or structured into many accounts to evade suspicion from data analysts, and phony invoices are produced to make payments appear to be for legitimate goods or services. Failure to act means that every day the cartels are getting better and better at moving dollars out of the U.S. How long are we going to allow them to train in our backyard?

### **Going After the Cartel Bosses**

In addition to disrupting the flow of cash, another law-enforcement tactic that can be used more effectively on the border is targeting the leaders of the criminal enterprises. When faced with sophisticated criminal organizations, cops will attack the top of the organization with every means at their disposal. Every charge they can make stick against the crime bosses will be used. It does little good to round up and imprison or deport the foot soldiers of the cartels. They are easily replaced with no damage to the organization. Yet most current efforts are directed at the small fries and the subcontractors. The highly publicized immigrant sweeps splash on nightly news and give the appearance of being tough, but the impact is minimal. The smuggling of drugs and people over the southwest border will not be reduced until it becomes hazardous to manage the criminal enterprises.

This country must break down the elaborate coordination required for successful smuggling. Arrest and incarceration of the bosses who coordinate the scouts, manage the money, and purchase the advanced technology will do just that. And we need to send a clear message that it will be extremely hazardous for anyone to take a fallen leader’s place. Such pressure, applied

at the same time the cartel money is disrupted, will destroy the criminal organization. Without the organizations, the holes in our border defenses disappear.

In Arizona, my office never had any doubt that dismantling the criminal organizations was our primary objective. With our federal and local partners, we investigated and prosecuted multiple cartel operations in cash, human, gun, and drug smuggling. Whenever possible, we closed the operations down, soup to nuts. We arrested not just the easily replaceable foot soldiers and subcontractors, but the top bosses.

Unfortunately, one state acting alone only has jurisdiction on the U.S. side of the border. Going after the major cartel bosses in Mexico was beyond our power. Ultimately, going after the bosses will require federal leadership and close cooperation with the law enforcement of Mexico; something which has been slow to come together, and which no state operating alone can accomplish. Such a multinational effort will require a much closer working relationship with Mexican law enforcement than has been achieved so far. There has been progress in that effort, especially in the last several months, but it is very hard to understand the protracted failure to engage in extensive common investigative efforts.

Yes, there is still corruption among Mexican law enforcement and the chance, although much progress has been made, that some targets might be warned off and investigations frustrated. But what is the alternative? No one can doubt the commitment of the Mexican government and people to the fight against the cartels. They have paid a huge price in blood for President Calderón's attempt to destroy these criminal organizations. If anyone has earned our respect and deserves our support, it is Mexico. With the Merida Initiative, begun by the Bush Administration and continued under Obama, the United States has placed extensive technology and firepower in the hands of the Mexican government. The support in material and arms has undoubtedly helped. But it is not enough.

The lack of bi-national coordination, in effect, provides cartel leaders a sanctuary south of the border. Without much better coordination with Mexican law enforcement on the most important cases involving the leaders of the cartels, they will continue to make a mockery of our border defenses.

### **Going on Offense**

So far, United States' border efforts have been basically defensive. We have made very significant investments in manpower and technology on our side of the border. But a team that only plays defense, however inspired, will lose. And, so will we. The legions of Border Patrol agents lined up along the north side of the border are sure to fail without the rest of a focused, multi-faceted, anti-crime package: stopping the flow of cartel money, going after the cartel leaders, and dismantling their criminal organizations. We could double again the number of Border Patrol agents and see little improvement. The cartels will continue to pick the weakest spots and bring their contraband, human and drug, across. It is time for a new game plan.

One goal which would be specific enough to give a clear idea of whether we were succeeding or failing would be the arrest, prosecution, and incarceration of Chapo Guzman, the notorious leader of the Sinaloa cartel. Such a goal, clearly stated and unequivocal, would provide focus and accountability to the efforts and would force a close working relationship among law enforcement across the border. If U.S. forces can find Osama bin Laden, I am sure, with Mexican help, they can find and arrest Chapo. After all, *Forbes* magazine publishes his photograph in its annual edition on the world's billionaires. That arrest would do more to stop the flow of contraband into the U.S. and the slaughter in Mexico than all the billions spent so far. With Chapo and other cartel leaders in custody awaiting trial, the Obama Administration could validly proclaim that it has made the border materially safer.

Time is of the essence. The cartels are gaining significant authority within some areas in Mexico, and the Mexican people understandably tire of the bloodshed and cost of fighting them. I have little doubt that, when the Calderón Administration ends in just over a year, Mexico's commitment to the fight against the cartels will wane significantly, if not actually come to an end. In addition, the cartels are rapidly diversifying into new lines of criminal activity, taking over the production and sale of pirated music CDs, videos, and software. They steal and distribute petroleum and hijack commercial trucks on an unprecedented scale. As they diversify, the cartels become harder and harder to isolate from the mainstream economy and harder to close down.

This is the time for a maximum coordinated push. If leaders in the United States are serious about defending our border and not just using border failures as an excuse for doing nothing on immigration reform, this country must become more than a glowering presence. Put the offensive team on the field and commit to finishing the job. Border defense is far more than just playing a deadly version of Red Rover.

### **Protecting the Ports**

One of the consequences of the hysteria about border security is the buildup of the Border Patrol at the expense of customs enforcement. The emphasis on protecting the long stretches of remote border between the official crossings (or "ports") has a price. With the de-emphasis on customs inspections at the ports and the resulting strain on Customs and Border Protection (CBP), more contraband gets through the ports.

Always opportunistic, the cartels have seen and seized the opportunity to put more contraband through the ports of entry. Most of the criminal activity has shifted to the border crossings, not the places in between. Texas congressmen have become particularly concerned by this misallocation of resources. But, the popular demand is for beefing up enforcement, not better inspections. Moreover, low staffing at the ports has damaged legitimate cross-border trade, with imported goods condemned to sit additional hours waiting to be inspected. By appearing tough—making fortification of the border with additional Border Patrol the top priority, while deemphasizing the ports of entry—it is easier for the criminals to come through our front door. Once again, the symbol has trumped reality.

## A Changing Mexican Criminal Justice System

In the midst of waging an all-out war against the cartels, Mexico has been quietly revolutionizing its justice system. Their current criminal trial procedures convict only one percent of the defendants. Trials are held behind closed doors using documentary evidence only, without confrontation of live witnesses, and are easily corrupted. For the assault on organized crime to succeed, Mexico recognized that it must adopt a more public prosecution system. The country is now transitioning to public trials and live confrontation of witnesses, similar to the U.S. It would be a massive undertaking to make such a fundamental change in normal times, but to do so in the midst of the cartel wars, with prosecutors' and judges' lives literally on the line, is nothing short of heroic.

The new criminal justice system is being rolled out state by state across Mexico. Thousands of prosecutors and judges are being trained in an effort funded in large part by monies from the Merida Initiative. Training has been done by the U.S. Department of Justice and state Attorneys General's offices. Very quietly, this transformation of the Mexican criminal justice system has been a huge success, perhaps the brightest spot in the entire border defense. It has the potential to make huge differences in the fight against the cartels, yet it has been largely unnoticed by the media and the border hawks. And, typical of the failure of coordination on the border, the most recent State Department budget cuts the training funds in half. Just when the new Mexican criminal justice system is poised to take flight, the U.S. is inexplicably cutting its wings.

## Conclusion

If the United States wants effective border security and not just a political punching bag, where symbolism trumps common sense, then more effective law-enforcement measures must be taken. By attacking money laundering and making bi-national criminal investigation and prosecution of the cartel bosses a priority, the border can be made significantly more secure. In the process, the mayhem in Mexico and the smuggling of drugs and people into the United States will be reduced. There must be a unified focus. All agencies must get on the same page for the effort to succeed. State and local law enforcement, with the coordinated efforts of all relevant federal agencies, can win this. Nothing less will.

Arizona can provide an instructive classroom for many of the procedures needed for success. We took the critical first steps in attacking the money laundering by human smugglers; we learned that trade through almost six years of trial and error. What is more, we developed excellent cross-border relationships, personal and institutional, and have—through the settlement with Western Union—unlocked a treasure trove of data relevant to illegal money transfers across the border. It is now up to the other states on the border, and federal officials, to take advantage of the lessons and mine the data bank for criminal leads. If that happens, we will take a long step toward eliminating the cartels. They are still flourishing today, precisely because one state working alone cannot make the comprehensive, bi-national, border-wide effort that is needed. Only the federal authorities can do that.

However relevant my experience may be to the challenges of border security, I cannot influence those whose only mission is to find fault instead of workable solutions. Those whose real intent is not to fix the border, but to stop—and, if possible, reverse—all immigration into the United States. They will never be satisfied. However, to those who are seriously interested in results, for those who want to see a secure and commercially viable border between the United States and the Republic of Mexico, a real 21<sup>st</sup> Century Border, my experience and the Arizona story can point the way.

## Endnotes

<sup>1</sup> Calling these criminal enterprises “drug cartels” is a misnomer. Unlike the 19th century industrial Robber Barons, they are vigorously, often viciously, competitive. Drug cartels are also rapidly moving away from a concentration on the production, smuggling, and distribution for sale of illegal drugs, using their organization and resources to diversify into other criminal activities, including kidnapping for ransom, extortion, and media piracy. Mexico has become the media piracy capital of Latin America, exporting so many illegal movies that the recording studios no longer try to sell their products in Central America. The rival cartels even brand their illegal products with their unique logos. They have also become a serious producer of illegal software, making thousands of copies of computer operating systems like Microsoft’s Windows XP. Drug cartels are more accurately called “transnational criminal organizations” (TCOs), but I will stick with the common denomination of “drug cartel,” or just “cartel.”

<sup>2</sup> This estimate is derived from U.S. Department of Justice, National Drug Intelligence Center, *2009 National Drug Threat Assessment*, December 2008, p. 49, and United Nations Office on Drugs and Crime, *The Globalization of Crime: A Transnational Organized Crime Threat Assessment*, 2010, p. 65.

<sup>3</sup> Arizona Governor Jan Brewer demanded 250 National Guardsmen at the beginning of the summer, but when the Administration promised twice that many, she did not hesitate to say the number was not nearly enough. See E. J. Montini, “Brewer got twice what she asked for,” *The Arizona Republic*, July 23, 2010.

<sup>4</sup> Mexican casualties in the cartel wars exceed the combined U.S. military losses in Iraq and Afghanistan.

<sup>5</sup> See The White House, Office of the Press Secretary, “Remarks by President Obama and President Calderón of Mexico at Joint Press Conference,” March 3, 2011.

<sup>6</sup> Congress, as part of credit card reform, ordered Treasury to write regulations for stored value instruments by February 2009. They did not. When regulations were finally drafted in 2010, they failed to cover international movement of the cards. The final rule has recently been promulgated, making some long overdue changes in how stored value instruments are reported and monitored, but still not closing the loophole in international money laundering by requiring them to be disclosed at the border.

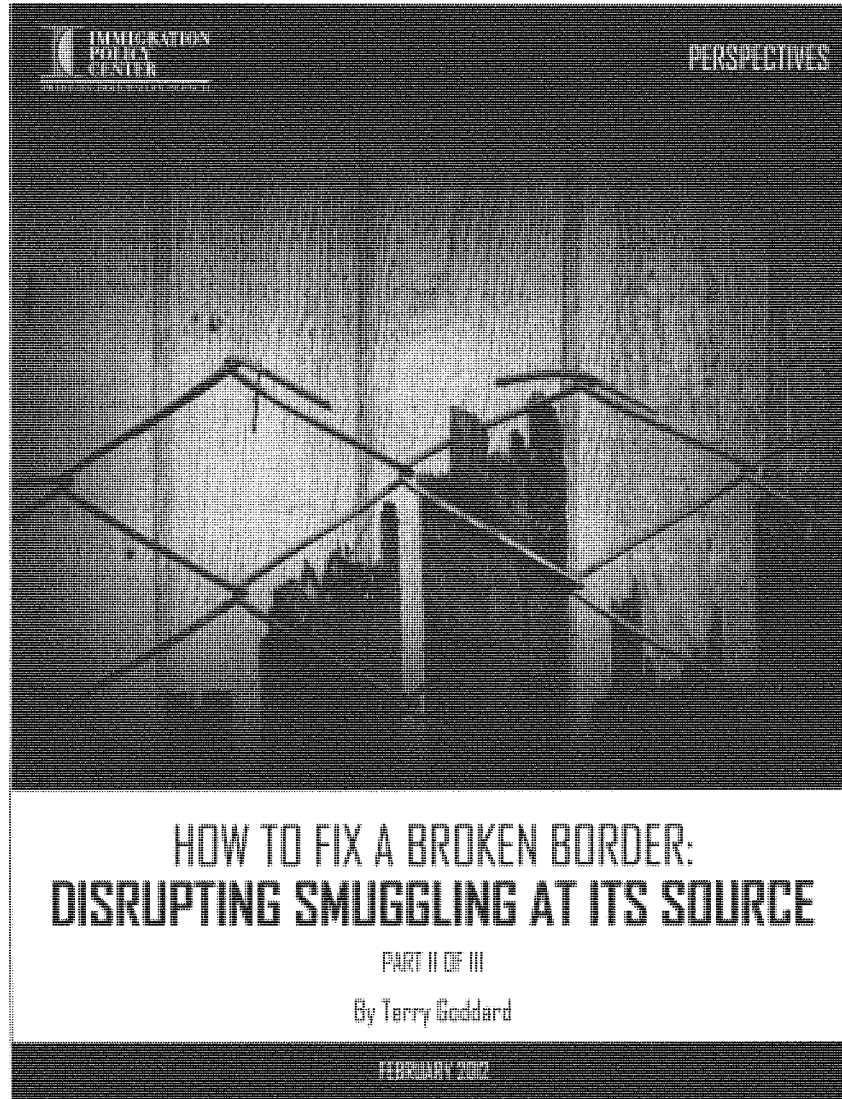
<sup>7</sup> U.S. Government Accountability Office, *Alien Smuggling: DHS Could Better Address Alien Smuggling along the Southwest Border by Leveraging Investigative Resources and Measuring Program Performance*, GAO-10-919T, July 22, 2010, p. 6.

<sup>8</sup> The Internal Revenue Service (IRS) and Immigration and Customs Enforcement (ICE) are showing interest in this data, although no arrests have yet been made.

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ATTACHMENT B





## HOW TO FIX A BROKEN BORDER:

### DISRUPTING SMUGGLING AT ITS SOURCE

PART II OF III

BY TERRY GODDARD

FEBRUARY 2012

#### ABOUT PERSPECTIVES ON IMMIGRATION

The Immigration Policy Center's *Perspectives* are thoughtful narratives written by leading academics and researchers who bring a wide range of multi-disciplinary knowledge to the issue of immigration policy.

#### ABOUT THE AUTHOR

**Terry Goddard** completed his second and final term as Arizona's Attorney General in January 2011 and has reentered the private practice of law. A native of Tucson, Arizona and graduate of Harvard College, he was first elected Arizona Attorney General in 2002. Over 8 years in office, he focused on protecting consumers and fighting the organized criminal activities of the drug cartels. He made significant progress in attacking cartel money laundering, seizing approximately \$20 million and culminating in an historic \$94 million settlement with Western Union in February, 2010. He received the Kelly-Wyman Award for 2010, the top recognition given by his fellow Attorneys General. Terry's first job out of ASU law school in 1976 was prosecuting corporate fraud. During his legal career, he has handled a wide variety of cases from a challenge to a federal highway route to election law matters before the state Supreme Court. Before law school, he served on active duty in the Navy, retiring as a commander after 27 years in the Reserves. Mr. Goddard is currently teaching at Columbia Law School in the Attorney General Project and a graduate course entitled "The Art of Public Decision Making" at Arizona State University School of Public Affairs. He has been selected a Wasserstein Fellow at Harvard Law School and is a Senior Fellow at the American Immigration Council. Terry lives in Phoenix with his wife Monica and teenage son.

#### ABOUT THE IMMIGRATION POLICY CENTER

The Immigration Policy Center, established in 2003, is the policy arm of the American Immigration Council. IPC's mission is to shape a rational conversation on immigration and immigrant integration. Through its research and analysis, IPC provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy on U.S. society. IPC reports and materials are widely disseminated and relied upon by press and policymakers. IPC staff regularly serves as experts to leaders on Capitol Hill, opinion-makers, and the media. IPC is a non-partisan organization that neither supports nor opposes any political party or candidate for office. Visit our website at [www.immigrationpolicy.org](http://www.immigrationpolicy.org) and our blog at [www.immigrationimpact.com](http://www.immigrationimpact.com).

## Introduction

Debates over immigration miss the critical border-security issues. Critics of current U.S. border strategies correctly point out that illegal drugs are still being smuggled across our southwestern border in wholesale quantity and that the flow of illegal border crossers, although reduced in recent years, is still significant. Until the border is “fixed,” they refuse to consider any immigration reforms. The Obama Administration takes the opposite tack, saying with great pride that it is creating a “21st Century Border”—one that is more secure now than it has ever been. Neither side in this debate seems interested in defining what a “secure border” means. And, without a definition, it is hard to say who is right or even what constitutes success or failure.

With all the overheated border-security rhetoric, it is commonly assumed that the problems on the border are basically simple and that they can be fixed the old-fashioned way with a greater infusion of money and manpower and maybe a better fence. The prevailing assumption is that all we need to stop illegal crossings of drugs, people, cash, and guns are more Border Patrol agents, more National Guard troops, and more surveillance and sensors to cover the hundreds of rugged miles between lawful ports of entry. The dispute is over how much is enough, with one side saying the current buildup has done the job and the other saying we need even more. Lost in this war of words is any understanding of the nature of modern-day smuggling.

***If this country wants to stop smuggling and not just present an obstacle to immigration reform, we must take a broader and more analytical approach to what motivates the smugglers...***

It is easy to be misled by focusing exclusively on the border as a physical barrier. Rather than being just a line in the desert sand, the southwest border is a complex, multidimensional interrelationship of immigration laws, cyberspace money transfers, and international business connections. Consequently, smugglers must understand and move easily in the multidimensional universe that is the border. Superbly organized, technologically adept, and very well funded, they can penetrate border defenses almost at will.

If this country wants to stop smuggling and not just present an obstacle to immigration reform, we must take a broader and more analytical approach to what motivates the smugglers—and the means by which they illegally move drugs, money, guns, and people in such large volumes with such impunity. Going after the contraband product or smuggled people, as this country has been doing for years, is destined to be an endless chase. The cartels will just regroup and continue operations, learning from their mistakes. If we are serious about stopping the threat on the border, we have to dismantle the criminal organizations that carry the contraband and take away the tools that make them so effective. Anything less will fail.

My perspective on border security and cartel procedures comes from a multitude of investigative reports and criminal prosecutions in Arizona over the past decade, while I served as the Arizona Attorney General. Although Arizona contains only 380 of the 2,000 border miles,

it is the entry point for over half of the people and drugs being smuggled into this country. My experience covers hundreds of different cases. In the process, I have gained a deep respect for the cartels' abilities, their sophistication, and their adaptability.

### The Truth about Border Violence

Given the hysteria about border security in much of the national media, many are surprised to find out how safe and even tranquil the border region of the United States is today. El Paso is the safest city of its size in the country. There has not been a murder in Nogales, Arizona, in years and other violent crimes are rare. Pat Castro, the wife of former Arizona Governor Raul Castro, told me with indignation, "What do they mean about violence? I walk my dog every night in sight of the border and no one bothers me." The murder of border rancher Rob Krantz was a tragic event, but the fact remains that his death was the only such tragedy in many years in one of the most robust smuggling corridors in the world.

***Cartels are not interested in power or violence for their own sake. They want to sell drugs or pirated videos or bootleg software—not create chaos.***

Politicians trying to fan outrage over the "broken border" fail to grasp that the cartels are not interested in power or violence for their own sake. They want to do business—to sell drugs or pirated videos or bootleg software—not create chaos. They will go to great lengths to protect their business interests, but they are opportunists, not terrorists. Violent confrontation in the United States is not in their best interest. Violence focuses U.S. public opinion and law-enforcement power against them, so they avoid confrontation in this country with iron discipline. Large loads of valuable drugs are abandoned rather than risk a fire fight with U.S. law enforcement. Instead of a range war against U.S. border defense personnel—a war the cartels are very well equipped to fight—their agents drop their guns and run when they are confronted. Faced with U.S. law-enforcement pressure, the cartels quickly shift ground, changing their points of entry, the size of their loads, the kinds of vehicles used, the time of day they move, and even the cargo being smuggled. Confrontation interferes with business, and business comes first.

### The Border Build-Up

Under the Bush Administration, and at an increasing rate under President Obama, the troops and technology in the stretches of the southern border between the ports of entry have grown substantially. The number of Border Patrol agents now stands at 21,000—twice what it was in 2003. The increase on the southwest border is even greater. New technology is continually being deployed. Portable ground radar units can (and do) spot jackrabbits as well as human border crossers. Vehicle X-ray machines the size of Good Humor trucks can scan a semi trailer in seconds and show if there are spaces to hide contraband. Aircraft are being deployed in increasing numbers, including unmanned aerial drones. Flying at night without lights at very

high altitude, the drones can spot virtually anything moving on the ground without being heard or seen.

Because much of this manpower and technology have been authorized to fight illegal immigration, it is assumed that would-be border crossers will be deterred simply by the size of our border operations. But, while this build-up may have deterred some border crossers, it has created a robust and profitable market for more sophisticated smuggling—one that the cartels have been only too ready to enter. As long as smuggling is profitable, there will be cartel smugglers ready, willing, and in most cases able to go over, under, around, and through whatever barriers are placed in their way.

I have seen over and over again how the cartels put sophisticated, military-grade hardware in the hands of highly proficient, specially trained operatives who are willing to take great risks for large profits. These agents are more innovative, more opportunistic, and more aggressive than the forces defending the border against them—and they have the advantage of being able to wait patiently until they can exploit the slightest opening. Technologically sophisticated, they can undermine, neutralize, or avoid whatever border defenders put in their way. Consequently, troops and technology alone will not stop the smuggling. The cartel agents can only be defeated by a completely new approach—one that is as flexible, opportunistic, and multi-dimensional as they are. The approach must target the cartel organizations themselves, not just the contraband they smuggle.

The challenge is by no means simple and the solution will take far more determination than has been applied so far. What will definitely not work are the simplistic one-dimensional answers that sound good on the evening news, but do little or nothing to stop the threat. The cartels don't care much about which product they sell, just their profits. To stop them, we must look at our defense the same way. They are opportunistic and highly flexible. For the border effort to succeed, there must be a national strategy that is as opportunistic and flexible as they are. We must stop compartmentalizing border objectives by illegal activity. Current agency efforts are focused on stopping particular kinds of contraband. A successful effort cannot be about immigration alone (ICE), or drugs alone (DEA), or guns alone (ATF). It must address, disrupt, and destroy the total business of the cartels. What also won't work is continuing the practice of committing some government agencies against the cartels while others stay uninvolved or actually work against our national interests. We will need a much better grasp of the problem and far better coordination of the defense effort than exist today.

***Cartel agents can only be defeated by a completely new approach—one that is as flexible, opportunistic, and multi-dimensional as they are.***

## Jumping La Linea

The movement of contraband, people, and drugs across the border is managed by drug cartels (or, more accurately, Transnational Criminal Organizations). These are dynamic, intensely competitive organizations, constantly shifting their territorial control and relative power. But for this analysis it is sufficient to see them as a unified threat. Whatever the cartel, Sinaloa or Gulf, Los Zetas or Tijuana, the organization, techniques, and technologies for crossing the border are similar. They all provide the coordination of effort, equipment, intelligence about law-enforcement activities, and security needed to move people and drugs through border defenses and into this country.

***Cartels don't want the movement of large numbers of people to draw attention to or interfere with the incredibly lucrative drug trade moving along the same physical routes into the United States.***

The cartels keep a sharp eye on border defenses, posting scouts on high points on both sides of the border. As survival experts, these men can stay on location for weeks if need be. Water and food are cached in the desert for them. They have powerful binoculars and solar-powered, secure communications devices. Every Border Patrol move along *La Linea* (the line, or the border) is observed and reported by these scouts.

When scouts report a break in Border Patrol coverage, smuggling teams are ready. The break may only last a few minutes, but that is enough. For instance, specially equipped pickups (extra shocks and cargo capacity) will be standing by south of the border, loaded with a ton or more of marijuana. One crossing method uses a special ramp mounted on a second truck. The ramp vehicle drives up to the border fence, drops a ramp extension from the bed, and hydraulically extends another over the cab, making an arch above the fence. The load truck drives up and over, across the border without touching the fence! The ramps are retracted and both vehicles leave the border. The whole process takes only a few minutes.

Most crossings are done at night without showing a light since the vehicles are equipped with military-grade night-vision equipment. The cargo trucks move quickly into the rugged canyons and are on their way for 40 to 80 bone-crushing miles to a highway and on to a drop house in Phoenix or beyond. If the break in Border Patrol defenses is short or pursuit likely, the truck can be quickly camouflaged and hidden in an arroyo for weeks. Scouts keep a close eye on the load until the coast is clear and it can be moved north.

Human smugglers (*coyotes*) use a similar technique. Their cargo usually consists of around 20 people, often called *pollos* ("chickens"), who have paid a small down payment on their passage fee in Mexico and promised to pay the rest when they have safely crossed the border and arrived at a drop house in Phoenix or another non-border location. Ten years ago that fee was around \$1,600. Today it is around \$3,500 and rising.

The *pollos* camp near the border, so when a break in Border Patrol defenses is reported, they can walk quickly across *La Linea* and into the rugged desert beyond. The *coyotes* move their cargo rapidly, staying in low areas as much as possible so the ground radar cannot pick them up. Sometimes the *pollos* carry 60-pound packs of marijuana as partial payment for their passage. Chemical stimulants help to hold off weariness, sometimes with tragic results. Depending on the crossing location, the walkers will come to a highway after a long day's hike or as many as three or four. The country is rugged and the heat can be deadly. Most travel is at night. Directed by the scouts stationed on the high points, the travelers take cover whenever the Border Patrol is getting close.

### Coyotes

There is a belief held by many that coyotes are modern-day Robin Hoods—that they take the poor workers under their protection, shepherding them across the border and the desert wastes to sanctuary in the United States, with little thought for themselves. If this manner of *coyote* ever existed, the species is extinct today. The cartels have moved into the human-smuggling business and taken it over. Why? First, they are much more effective against the built-up border defenses than any mom-and-pop operation. Second, the cartels don't want the movement of large numbers of people to draw attention to or interfere with the incredibly lucrative drug trade moving along the same physical routes into the United States. In the smuggling corridors, the controlling cartel schedules all northbound movement, human and drug. No independent involvement is allowed. Third, as border security has increased, the price for transportation has soared, making the trade in human beings very lucrative. The end result: Exit Robin Hood, enter highly organized, systematically brutal, and very efficient cartels.

### The Journey North

After crossing the border, the journey north is a grueling trek even for the athletic. In his book *Midnight on the Line*, Reuter's reporter Tim Gaynor recounts how two young, fit journalists attempted the crossing without *coyote* help.<sup>1</sup> They push on for just over a day and a half, find they are hopelessly lost, exhausted, hungry, and thirsty—and desperately signal to the Border Patrol to pick them up before they perish. The hardships of the journey are also well described in the 2006 teen novel *Crossing the Wire*, by Will Hobbs. The perils of passage through the desert and mountains, the villainous *coyote*, and the suffering of the drug mules are compellingly presented in this story of two boys trying to find work in *El Norte*.<sup>2</sup>

When a smuggled group reaches a highway or a major roadway, the criminal organization may have arranged for a vehicle to be parked and ready, keys in the ignition and the tank full of gas, for the run to a drop house. For other groups, carefully coordinated drivers arrive just in time to pick up the *pollos* as they come out of the scrub. Most times, the carry vehicle(s) will be accompanied by a scout car that goes ahead and looks for roadblocks or law enforcement. Usually, there will also be a heavily armed guard car to prevent hijacking. Besides law enforcement, gangs of robbers (*bajadores*) are watching for the *pollo* carry cars, ready to

swoop down and seize the cargo. The *bajadores* then collect the rest of the payment due, or raise the price and hold the *pollas* for ransom.

Since the business relationship between the *coyotes* and *pollos* is a one-time contact, payment must be quick and secure. For years, the preferred method has been wire transfer, which gives smugglers the choice of many pickup locations, instant cash, and few questions asked. They find a location where the clerk, for a fee, is willing to ignore federal reporting requirements or allow the pick-up agent to change identification and become a different person for reporting purposes whenever the \$10,000 federal reporting limit is approached.

### Money Drives the Show: Cartel Organization

Cartels are masters at contracting out. In the United States, cartels don't work through family or initiated members. Instead, they rely upon subcontractors—businesses which are either set up to serve the smugglers' needs or formerly legitimate operations that become providers to the cartels. Once a business starts working with the cartels, the criminal-related activity becomes its main customer base. While exclusive, the relationship is handsomely profitable, paying over the going rate for goods and services. This practice has been one, perhaps the only, consistent factor during the years I have worked on cartel-related investigations and prosecutions.

Contracting out creates misimpressions about the effectiveness of the law-enforcement response to smugglers. When a U.S. official holds a news conference proudly proclaiming the investigation of a "cartel" smuggling operation, the identification and arrest of the principals, and seizure of their assets, what this really means is that a business which contracts with the cartels for part of their operations has been identified and disrupted. That should be applauded, but in context. The elimination of one contractor, however satisfying, is by no means a blow to the criminal effort. There are certain to be other contractors operating on parallel tracks at each stage of the smuggling operation. Contractors are easily replaced. At worst, the smugglers experience some dislocation and must perform damage control.

***Cartels are masters at contracting out ... They rely upon subcontractors—businesses which are either set up to serve the smugglers' needs or formerly legitimate operations that become providers to the cartels.***

A good example of subcontracting is found in Operation River Walker, a 2008 prosecution resulting from a seven-month investigation into the Suarez-Fernandez Organization. The suspects arranged for the transportation of people from the border to drop houses in Phoenix. According to investigators, undocumented immigrants were charged about \$2,500 each to be smuggled into the United States. At the border, a "guide" or "walker" brought the smuggled people through the San Pedro River Riparian National Conservation Area. They were met by a "border organizer" who paid the different "sub-contractors" along the route—such as drivers, drop-house operators, bank-account holders, and load drivers—for their services. The Suarez-Fernandez Organization had set up this network over 10 years earlier. It facilitated the illegal



entry of over 8,000 persons per year into the United States, or at least 80,000 persons total. Operation River Walker took down an entire criminal enterprise, arresting not only the two coordinators, but all of the sub-contractors who made the business tick. It was a great success, but human smuggling continued in the same corridor.

Other prosecutions show how the cartels have been able to subvert formerly legitimate businesses. Seven travel agencies that catered to cartel customers were seized in Operation Fly by Night. These Arizona travel agents found it very profitable to provide tickets for lists of passengers, sight unseen, who were seeking air transportation from the McCarran International Airport in Las Vegas, one way to destinations in the deep South. Payment was usually in cash at over the list ticket price.

***The elimination of one contractor, however satisfying, is by no means a blow to the criminal effort. There are certain to be other contractors operating on parallel tracks at each stage of the smuggling operation.***

In Operation Car War, 11 used-car lots in Phoenix were seized and the owners prosecuted for providing and storing used cars which transported *pollos* from the border. This investigation helped to answer the question of where were all the cars needed to transport thousands of people from the border. The answer: in plain sight, in the middle of town, on used car lots. It must have been perplexing for a would-be used car buyer at some Phoenix area car lots to find that none of the cars were for sale! A critical aspect of the scheme was that the lot operators, after selling their cars for cash to a *coyote*, placed phony liens on them. That way, when the Border Patrol or other law enforcement seized the cars, they were dutifully towed back to the "lien holder" car lot and the process started all over. The informant who broke this case was an inquisitive tow truck driver.

Operation En Fuego involved a large van transportation network that moved *pollos* from the border to Phoenix and on to 22 states. Operation Vaqueros went after a drug-trafficking organization responsible for moving large quantities of marijuana through southern Arizona, primarily in Cochise County. The organization employed advanced counter-surveillance, ramp trucks to overcome vehicle barriers at the border, and cleverly hidden vehicle compartments.

The use of technology in the smuggling of drugs has many variations. Specially constructed compartments welded into car bodies or attached to the undercarriage, hidden compartments in gas tanks where the gas smell will throw off drug-sniffing dogs, and other special modifications are common. In the case of Operation Driveshaft, drugs or money were hidden inside specially modified drive shafts of the defendants' vehicles. Even when dogs alerted on the vehicles, investigators failed to find the hidden compartment. During the execution of a warrant at the residence of a suspect, officers found three disassembled drive shafts. Two were packed with large quantities of cocaine. In another instance, officers stopped a southbound vehicle and found \$143,500 hidden within the drive shaft. In total, Operation Driveshaft led to the seizure of 36 pounds of cocaine, four pounds of heroin, 40 pounds of marijuana, and close to \$2.25 million in racketeering proceeds.

Operation Tumbleweed showed in detail how a sophisticated criminal operation could compromise border security. Equipped with radio towers set up in the desert to communicate, employing as many as 50 scouts scattered through the rugged border country to direct the operation, and using a mobile ramp to help vehicles hop the border fence, the Garibaldi-Lopez drug-trafficking organization was highly effective. It was beaten by the combined efforts of Phoenix police, the Pinal County Sheriff's Office, and the Arizona Department of Public Safety, along with federal agents. Linked to the Sinaloa cartel, the group smuggled over 400,000 pounds of marijuana per year into the United States from Mexico to stash houses in Phoenix to be sold across the U.S. Over its years in operation, the Garibaldi-Lopez organization smuggled over 2 million pounds of marijuana with a wholesale value estimated by agents to be \$1 billion.

The organization modified vehicles stolen in the United States to carry 2,000 to 2,500 pounds of bundled marijuana. Between one and four "load vehicles" were used for each cross-border shipment. The organization ran approximately one shipment per week. Each shipment occurred in two stages. The first stage transported bulk marijuana from the border into the remote country between Tucson and Phoenix. The organization allegedly loaded the vehicles in Sonoyta, Mexico, and crossed covertly into the U.S. through the Tohono O'Odham Nation. The movement of each load vehicle from Mexico to its final destination at a stash house in Phoenix involved no fewer than 20 people.

In indictments made public in December 2008, investigators describe the organization's movement through the desert as methodical. They went to great lengths to remain undetected, driving load vehicles through dry washes and dirt roads in barren parts of the desert. Drivers were outfitted with night-vision equipment to enable the vehicles to travel in the dark without any illumination. The load vehicles also carried tarps in the event they needed to stop and cover up so as not to be visible from the air. After being used, load vehicles were abandoned in Pinal County's Hidden Valley. The organization deployed scouts in the high ground of the U.S. desert to act as counter-surveillance against law enforcement. The scouts were outfitted with electronic equipment to communicate with the load trucks, advising the load drivers when to move. Scout coordinators dropped off food and supplies, enabling the scouts to stay in place for weeks at a time.

The second phase of the shipment involved transporting the marijuana into the Phoenix metro area. Once in Pinal County, the bulk loads were broken down into smaller loads. A separate group of drivers using inconspicuous SUVs and pickup trucks brought the marijuana into the Phoenix metro area, where it was turned over to the first-level customers who allegedly took their share to their respective stash houses. Payment for the marijuana was sent in bulk cash by car from Phoenix to Mexico. The load drivers from the first stage and the scouts from the desert would come to Phoenix to be paid, and then return to Mexico in a shuttle bus to prepare for the next load. When loads were not being moved, the scouts stayed in a compound in Pinal County, housing 10 to 15 scouts at a time awaiting redeployment.

Eerily reminiscent of Operation Tumbleweed was Operation Pipeline Express, completed with a flurry of arrests on October 31, 2011. Proclaimed as an “historic” blow to the Sinaloa cartel, the 17-month investigation claimed that it shut down an unnamed criminal organization which allegedly was smuggling \$33 million a month in drugs through the same deserts of western Arizona that were used by the Garibaldi-Lopez organization dismantled by Operation Tumbleweed. According to the Immigration and Customs Enforcement (ICE) press release, Operation Pipeline Express “dealt a significant blow to a Mexican criminal enterprise” and sent a “resounding message to the Mexican cartels that Arizona is off limits.”<sup>3</sup> As the *New York Times* reported, “the authorities acknowledged that the huge smuggling ring operated under their noses, in rugged terrain that is difficult to patrol.” The drugs were carried across the border, mostly in backpacks, and then transported to a network of stash houses in the Phoenix area. From there, the drugs were sold to distributors across the country. The route was through desolate desert in southern Arizona, including the Tohono O’odham Nation. Like the smugglers in Tumbleweed, spotters watched for out for law enforcement and diverted the loads if necessary.<sup>4</sup>

While this latest operation cites an impressively high level of interagency law-enforcement cooperation—federal, state, and local—the inflated rhetoric is identical to statements made less than three years earlier in announcing the conclusion of Operation Tumbleweed. Especially suspect is the claim that for the past five years the unnamed organization taken down in Pipeline Express exercised a “virtual monopoly” over the 80 miles of Arizona-Mexico border between Sells and Yuma. The clear implication is that authorities have stopped the only criminal smuggling operation in the corridor. However, it is impossible to reconcile this “virtual monopoly” language with the 2 million pounds of marijuana smuggled in the same corridor by the Garibaldi-Lopez group only a few years before.

***These large busts, while highly satisfying and good fodder for the media, do not end the criminal operations.***

Pipeline Express, perhaps inadvertently, makes one point with crystal clarity: There is no operator “monopoly” in the smuggling routes, but many parallel operations controlled by a cartel. These large busts, while highly satisfying and good fodder for the media, do not end the criminal operations. Even the impressive amount of drugs seized and persons arrested in Pipeline Express hardly makes a dent in the illegal traffic. Far from ending criminal activity in the area, the cartels go to school on operations like Tumbleweed and Pipeline Express, modify their procedures, and continue to push drugs and people across the border using parallel organizations in the same corridors. Matthew Allen, ICE’s special agent in charge for Arizona, commented that it was only a matter of time before either the Sinaloa cartel or another operation reclaims the area affected by the bust.<sup>5</sup>

It didn’t take long. Only hours after the news conference proclaiming how Pipeline Express broke up the alleged smuggling “monopoly,” Francisco Guillermo Morales Esquer, 36, was caught in Pinal County with more than \$1.5 million of heroin and methamphetamine. According to Pinal County Sheriff Paul Babeu, the Morales arrest is an example of the shape-shifting

nature of cartels. Babeu, in a news conference, opined that although Pipeline “struck a body blow” to the cartel, “they are still operating in robust fashion.”<sup>6</sup> Not much of a “body blow.”

Of course, another version of contracting out done by the cartels is their associations with organized street gangs in the United States. These criminal alliances have been identified by the Justice Department in over 200 U.S. cities.<sup>7</sup> Cartel representatives or agents are present in cities where alliances exist, primarily for observation and communication back to Mexico. The business on the street is conducted by local gang members. These very important criminal connections are for the local distribution of drugs and sale to the end user. I have not observed gang affiliations involved in the smuggling of drugs or people across the international border, so they are beyond the scope of this paper.

### **Bribery and Intimidation in the U.S.**

In the last few months of 2010, some particularly disturbing cases crossed my desk. Disturbing not for the large amount of drugs or number of people involved, but for the use of U.S. citizens and officials as part of the criminal scheme. Many in the United States believe that official corruption “can’t happen here”; that only in other countries do corrupt officials take bribes. Unfortunately, they are wrong. The cartels have been very successful using bribes and intimidation to turn officials in Mexico. It is beginning to happen in the U.S. as well. In one case, a legal assistant in the Cochise County Attorney’s Office was caught sending information to drug smugglers. She was not a high-level employee, but she had access to enough confidential information to provide the criminals with valuable tips on what was or was not being investigated. Another group smuggling drugs across the Tohono O’Odham Nation employed an Army National Guard member in uniform to keep vehicles from being searched.

***Many in the United States believe that official corruption “can’t happen here”; that only in other countries do corrupt officials take bribes. Unfortunately, they are wrong.***

Over the years, there have been reported instances of federal officers in the Customs Service being bribed to look the other way when a load of contraband comes through their gate. The pressure on these officials is increasing as more contraband is funneled through the official ports of entry.<sup>8</sup> More recently, as reported by the *New York Times* in September, “authorities were reminded of how challenging the drug war had become when they arrested a Homeland Security official stationed at the border, charging him with leading the police on a chase through the desert during which he hurled packages of marijuana from his government vehicle.” In October, “a federal grand jury in Tucson handed up an indictment charging a Border Patrol agent with accepting a bribe to let a truck that he believed was smuggling drugs and migrants past a checkpoint in southern Arizona.”<sup>9</sup>

This past May, three employees of America’s self-proclaimed toughest sheriff were arrested in a drug and human trafficking case. Maricopa County Sheriff Joe Arpaio said a deputy and two female detention officers at the sheriff’s largest jail facility were among 12 people taken into

custody and accused of being in a Phoenix-based international drug-smuggling ring.<sup>10</sup> They were alleged to have worked with members of the Sinaloa cartel to bring more than five pounds of heroin into the Phoenix metropolitan area every week. The deputy, Alfredo Navarrette, was a member of the sheriff's human-smuggling unit. One of the detention officers, Marcella Hernandez, told authorities that she was eight-months pregnant with the child of Francisco Arce-Torres, the alleged drug ring's leader, who court documents said is a member of the Sinaloa cartel. The county Attorney's Office made plea bargain offers to 19 defendants in the case, saying that the proposed sentences ranged from probation to "substantial prison terms."<sup>11</sup> The investigation and filed charges show that even the most overtly anti-smuggling agency can be infiltrated.

Cartel recruitment of American high-school students is on the rise as well.<sup>12</sup> Children provide cover and, if caught, are punished less severely than adults. Economic distress along the border makes the offers by the cartel agents especially enticing to teens. Anti-racketeering funds are being successfully used to reduce the number of vulnerable youth on the border. The Santa Cruz Sheriff's Office received \$50,000 in December 2010 for their anti-gang initiative, to be used jointly with the Nogales Boys and Girls Club. At the same time, the Yuma County Sheriff's Office was granted \$25,000 for a similar program.

### Why the Wall Won't Work

One can't help but hear support for a border wall, including—most notably—from Arizona Sen. John McCain. It is a recurring theme on talk radio. According to some advocates, the wall is supposed to keep "drug cartels, violent gangs, an estimated 20 million illegal aliens, and even terrorists" out of the country.<sup>13</sup> These grand claims, made on an officially sanctioned State of Arizona web site, might be funny—just another Arizona diversion for late-night comics—were not border security so serious. Not many contributors have been misled, so far. In over six months of solicitation for private funds, the official effort had raised only \$191,675 as of January 15, 2012.

From a law-enforcement, public-security perspective, the wall distracts this country from serious efforts to fight border crime. It could potentially divert a staggering amount of public resources to a construction project that does nothing of consequence to stop smugglers. It is naive to think that any physical structure today could even slow down the smuggling efforts of the drug cartels with their superb organizations, advanced technology, and vast resources.

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The cartels have the capacity to go over, under, around, and even through virtually any physical barrier. Janet Napolitano once memorably observed that, "for every 50 foot wall, there is a 51 foot ladder."<sup>14</sup> Walls can be defeated by tunneling; the ground under Nogales, Arizona is honeycombed with known tunnels and no one thinks they have all been found. A wall can be flown over, and already the drug smugglers' vehicle of choice is an ultra-light aircraft. The most imposing sections of the wall in Nogales, made of metal landing mats, can be cut through with high-temperature plasma cutting torches in seconds. The Border Patrol has had to weld so

many patches over the holes that the wall there looks more like a patchwork quilt than a barrier. According to the Government Accountability Office (GAO), “during fiscal year 2010, there were 4,037 documented and repaired breaches” of border fencing.<sup>15</sup> Besides, no wall on earth could have stopped half of the people who are illegally in the U.S. today because they crossed with valid papers through a port of entry and overstayed their visas.<sup>16</sup>

Constructing any part of the wall wastes valuable time and resources. Worse, like a modern version of the Maginot Line, it provides a false sense of security, the illusion that we are doing something to remedy border problems. This is no time to get distracted by building the wall or any other diversion.

### Targeted Enforcement

The U.S. should be putting all available resources, public and private, where they will be most effective: into fighting the drug cartels. An effective border defense must be intelligence driven and multi-level. We have seen how the cartels can use their information systems and secure communications to pick out and exploit the slightest hole in border defense. It is almost impossible to stop such sophisticated smugglers at the border. They will usually get across. Therefore, smuggling routes must be monitored deep into this country. Information from wire taps, informants, and thousands of discrete sources on both sides of the border must be gathered, synthesized, and analyzed. Sophisticated intelligence analysis can do more to protect the border than any wall.

***The U.S. should be putting all available resources, public and private, where they will be most effective: into fighting the drug cartels. An effective border defense must be intelligence driven and multi-level.***

But most important of all, border-enforcement efforts must target the cartel organizations. It is these organizations which make it possible to elude detection using sophisticated technology, advanced communications, and real-time intelligence—along with the dual persuaders of threats and rewards. The cartels and their legion of subcontractors are the real criminal threat; not the migrants who hope to find work or join their families in the United States. Arresting thousands of *pollos* is a huge waste of resources. They or others like them will continue to attempt illegal entry, making the cartels even stronger with their passage fees. Pouring even more money and manpower into enforcement on the border will have little impact as long as the criminal organizations remain intact.

Whatever makes the cartel organizations strong must be attacked. Their communication systems must be cracked, jammed, and shut down. Their leaders must be identified, arrested, and incarcerated. Most important, the illegal flow of funds across the border into cartel pockets must be disrupted, interrupted, and stopped. Money is at the heart of all criminal organizations and this country has hardly lifted a finger to stop over \$40 billion a year in cartel funds pouring across the border.<sup>17</sup> International banks, wire transfer companies, stored value instrument issuers, and many import-export businesses are involved or complicit in the illegal movement of

funds. The physical border is irrelevant to the flow of money; it is the virtual border in cyberspace and currency exchanges that must be defended. Unless the Department of the Treasury becomes a full participant in the effort to stop the cartels by cutting off the illegal transfer of funds, there is little hope of success.

Our country has the law-enforcement expertise for what is needed. The mystery is why it has not yet been fully engaged. Why has there not been the kind of full-scale, all-out assault that was directed at the Mafia? So far, we see token and isolated gestures. The seizure of contraband, however impressive, does little to disrupt the cartel businesses. The round ups of “illegals” make headlines and pad agency budgets while the criminal organizations quietly regroup and keep breaking our laws.

Critical time is wasting. Few think that the courageous Mexican initiative against the cartels will be continued at the current level after the Calderón Administration ends in less than a year. This is the time for a maximum effort against the cartels. Only when the smuggling organizations are dismembered will border defense efforts be equal to the threat. Only then can it truthfully be said that the border is “secure.”

#### Endnotes

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<sup>3</sup> U.S. Immigration and Customs Enforcement, “Multi-agency probe deals death blow to ‘billion dollar’ drug ring,” October 31, 2011.

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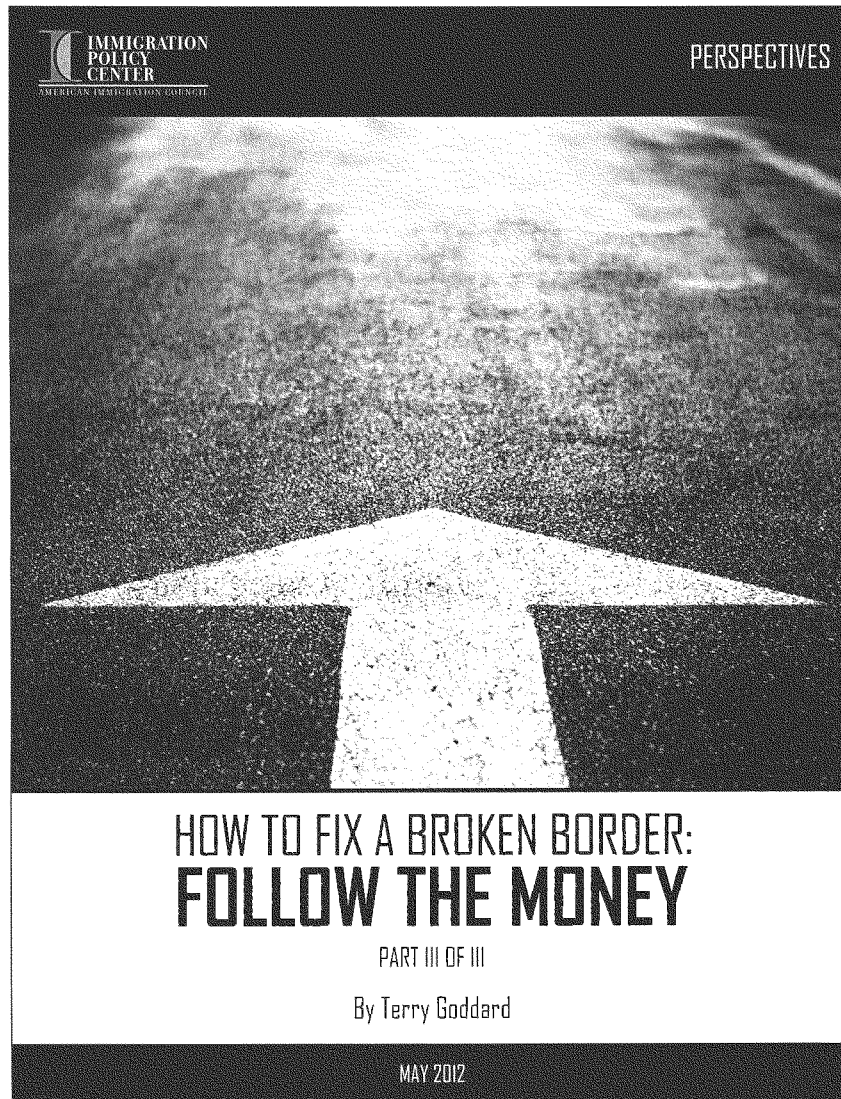
<sup>16</sup> Pew Hispanic Center, *Modes of Entry for the Unauthorized Migrant Population* (Washington, DC: May 22, 2006).

<sup>17</sup> This estimate is derived from U.S. Department of Justice, National Drug Intelligence Center, *2009 National Drug Threat Assessment*, December 2008, p. 49, and United Nations Office on Drugs and Crime, *The Globalization of Crime: A Transnational Organized Crime Threat Assessment*, 2010, p. 65.

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ATTACHMENT C





## HOW TO FIX A BROKEN BORDER: FOLLOW THE MONEY

PART III OF III

BY TERRY GODDARD

MAY 2012

### ABOUT PERSPECTIVES ON IMMIGRATION

The Immigration Policy Center's *Perspectives* are thoughtful narratives written by leading academics and researchers who bring a wide range of multi-disciplinary knowledge to the issue of immigration policy.

### ABOUT THE AUTHOR

**Terry Goddard** completed his second and final term as Arizona's Attorney General in January 2011 and has reentered the private practice of law. A native of Tucson, Arizona, and graduate of Harvard College, he was first elected Arizona Attorney General in 2002. Over eight years in office, he focused on protecting consumers and fighting the organized criminal activities of the drug cartels. He made significant progress in attacking cartel money laundering, seizing approximately \$20 million and culminating in an historic \$94 million settlement with Western Union in February 2010. He received the Kelly-Wyman Award for 2010, the top recognition given by his fellow Attorneys General. Terry's first job out of ASU law school in 1976 was prosecuting corporate fraud. During his legal career, he has handled a wide variety of cases, from a challenge to a federal highway route to election law matters before the state Supreme Court. Before law school, he served on active duty in the Navy, retiring as a commander after 27 years in the Reserves. Mr. Goddard is currently teaching at Columbia Law School in the Attorney General Project. He also teaches a graduate course entitled "The Art of Public Decision Making" at Arizona State University School of Public Affairs. He has been selected a Wasserstein Fellow at Harvard Law School and is a Senior Fellow at the American Immigration Council. Terry lives in Phoenix with his wife Monica and teenage son.

### ABOUT THE IMMIGRATION POLICY CENTER

The Immigration Policy Center, established in 2003, is the policy arm of the American Immigration Council. IPC's mission is to shape a rational conversation on immigration and immigrant integration. Through its research and analysis, IPC provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy in U.S. society. IPC reports and materials are widely disseminated and relied upon by press and policymakers. IPC staff regularly serves as experts to leaders on Capitol Hill, opinion-makers, and the media. IPC is a non-partisan organization that neither supports nor opposes any political party or candidate for office. Visit our website at [www.immigrationpolicy.org](http://www.immigrationpolicy.org) and our blog at [www.immigrationimpact.com](http://www.immigrationimpact.com).

## Introduction

For all the political rhetoric and chest pounding about border security in recent years, the U.S. has done very little, and politicians have said almost nothing about, the need to cut off the funds flowing illegally across the southwest border and feeding the drug cartels. The most basic, the most effective approach to fighting organized crime has always been to cut off their funds. But this is not being done in the case of the cartels. Billions of dollars in illegal revenue from the sale of drugs and other contraband continues to flow into cartel pocketbooks, as well as to criminals within the U.S. The money pours over the border by many means, from bulk cash shipments and wire transfers to funnel bank accounts and stored value instruments. Most of these transactions clearly violate anti-money laundering laws. Yet, rather than disrupting this flow of cash, the U.S. government expends almost all of its border security resources building more fences and chasing would-be workers through the desert.

***By letting so much illegal cash literally flow through its fingers, the United States is making sure that the cartels have the resources they need to attack and defeat our border defenses.***

Only recently has the Department of Homeland Security been making substantial seizures of bulk currency headed south. The totals are impressive—over \$150 million in bulk currency seized in fiscal year 2011 (up from \$7.3 million in 2005).<sup>1</sup> However, compared to the billions headed to Mexico, this is a drop in the bucket. The National Drug Intelligence Center has estimated the amount of money flowing from the United States to Mexico from the sale of illegal drugs in this country at between \$19 billion and \$39 billion per year.<sup>2</sup> That number is four years old and undoubtedly low. Revenue from the total sale of drugs in the United States was estimated last year to be \$64 billion.<sup>3</sup> More recently, the number was placed at “over \$85 billion by a Justice Department official.”<sup>4</sup> Human smuggling into the United States, according to a United Nations estimate, brings in over \$6 billion more.<sup>5</sup>

Although some cartel funds are used to purchase guns and other products and services in the United States, most of the cartel revenues must be moved back across the border. And, because of changes in Mexican law in 2010 restricting the holding of dollars by Mexican citizens, the dollars must be converted to pesos. This torrent of cash pays for the highly trained personnel who are killing Mexican police and public officials, and who are so expert at smuggling drugs, guns, and people across the U.S. border. The money also encourages corrupt officials to look the other way and pays for the sophisticated technology and weapons that the cartels use to such deadly effect.

By letting so much illegal cash literally flow through its fingers, the United States is making sure that the cartels have the resources they need to attack and defeat our border defenses. But, some say, the cartels are not terrorists and cutting off terrorist funds must be our main international objective. However, there is no way to distinguish between illegal money transfers to the cartels and similar transactions to terrorist organizations. Once the guards against money laundering are down, the money corridors and criminal money brokers are impartial. Leave open the door for one, and it is open for all.

Over the past decade, Arizona has occupied a front-row seat for the dramatic increase in smuggling of people, drugs, guns, and contraband across the southwest border. Frustrated by the lack of federal response, law enforcement in the Grand Canyon State attacked what they knew to be the most vulnerable point in the massive smuggling organizations—their access to cash. As one state, working virtually alone, Arizona could not stop the criminal monster. But we did learn some valuable lessons, discover some cartel vulnerabilities, and develop important investigative resources that, if aggressively deployed in federal hands, could prove decisive in the effort to protect the southwest border.

## Wire Transfers

Wire transfer has been, and in some places may still be, the payment vehicle of choice for human smugglers. The reasons are obvious. Human smugglers have a one-time contact with their “cargo.” Once the person being smuggled is released in the United States, it is likely that the smuggler will never see them again. Payment must be fast, close in time to the moment the cargo is safely deposited at a drop house, and as anonymous as possible. The cartel agent must be able to collect many individual payments at the same time without arousing official suspicion. Once the wired funds are received by the smuggler, or *coyote*, the smuggled person is released from the drop house or escorted on the rest of his or her journey.

### Arizona: A Case Study in Enforcement

More than 10 years ago, under the expert leadership of Cameron (Kip) Holmes,<sup>6</sup> the Arizona Attorney General’s Office started to go after smuggler money. At the time, and until a few years ago, hundreds of millions of cartel dollars were being wired illegally into Arizona. As the Arizona Attorney General from 2003 to 2011, I made targeting these practices a top priority.

Our investigators with the Arizona Financial Crimes Task Force looked for financial anomalies; mismatches that did not correspond to business reality. They immediately saw that Arizona was a huge net importer of wired funds. At the top-ten Arizona wired-funds locations, over \$100 were coming in for every dollar wired out. Wire transfers into Arizona from other states, in amounts over \$500, totaled more than \$500 million per year. Since there was no apparent business reason for this imbalance, the investigators took a closer look.

Arizona investigators posing as drug dealers picked up wired payments at telegraph offices.<sup>7</sup> After receiving wires totaling almost \$10,000—the threshold at which transactions in a single day under one name must be reported to the federal government—the agent would pull out identification for someone else and attempt to continue receiving wire transfers under the new name, so as to not trigger a report. Far from being astonished by this miraculous change in identity, desk clerks routinely accepted multiple IDs—as many as six at a time. In one case, the clerk examined the freshly produced ID and told the agent that it was not a very convincing forgery and that her cousin a few doors away would do a much better job. In other cases, the clerk would just give the customer a new ID from a stack kept behind the counter.

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Beginning in June 2003, Arizona started issuing Geographic Targeting Orders (GTOs)<sup>8</sup> by which the state required additional identification or required additional reporting from the wire-transfer agents for certain types of financial transactions in an identified geographical area.<sup>9</sup> Under a GTO, Arizona could, for example, require all high-volume money transmitter locations in the southern part of the state to obtain the fingerprints and signatures from all persons who received person-to-person wire transfers in amounts over \$500. Based on analysis of the transaction data produced by the GTOs, as well as other evidence gathered through more traditional law-enforcement actions, the Task Force obtained 25 court-ordered warrants from the summer of 2001 through 2006 permitting seizure of wire transfers it had probable cause to believe were intended to pay for human smuggling or narcotics trafficking.

These “damming warrants” described the type of wire transfers the Task Force determined were most likely to be used for payment to human smugglers. At first, the descriptions were pretty simple. When we first used damming warrants, passage across the border cost around \$2,000, and an identifiable set of smugglers picked up most of the money at a few high-volume locations on the Arizona side of the border. The damming warrant therefore described transactions of approximately \$2,000, picked up by one of several specified *coyote* agents at specified locations. Later in the process the courts accepted a detailed description of the transaction—such as the amount of the wire, location of the pick-up, and number of similar transactions—but without naming the pickup operators, as sufficient grounds to issue a warrant.

Under the warrant, the money transmitter was ordered to electronically divert into a holding account wire transfers that matched the court-targeted criteria. When the *coyotes’* runners, called “pick-up operators” by law enforcement, tried to obtain the funds, they were told that the money was being held by the Attorney General. The money transmitter company provided a number to call if the frustrated recipient wished to pursue the money. That number was answered by specially trained, bilingual police officers who tried to determine if there was a legitimate purpose for the wire payment. Many of the callers were very frank, saying the money was to pay a *coyote* for illegally bringing someone into the country. Others made up elaborate stories, almost all of which fell apart when questioned.

The police officers handling the calls were instructed to let even semi-plausible explanations pass and, in those cases, to release the money. But if the caller admitted an illegal purpose for the funds, or the story was too improbable to believe, the money remained in official detention. All detained funds were taken before a court for a final seizure proceeding. At that hearing, the state had to demonstrate to the court’s satisfaction why it believed that the funds were the proceeds of illegal acts. Anyone whose money was held could appear at that hearing to make their case that a particular seizure was improper. About \$17 million was detained by the damming warrants and processed for court seizure. In almost six years of court actions and 25 warrants, no party successfully challenged a money seizure for forfeiture.

No damming warrant was effective for very long. As soon as the smugglers got word that money was being held at their usual pick-up points, they figured out the criteria being used and quickly

changed their payment procedures. If a certain dollar amount was being targeted, the next payments would be broken into smaller amounts. If certain locations were targeted, the pick-up operators went elsewhere. The money detained by each warrant reached its highest point shortly after initiation and within three days fell to almost zero as the smugglers adapted to law-enforcement's initiative.

As the damming warrants became more successful, the disproportionate volume of inbound wires to Arizona began to shrink. By 2006, the peak month of incoming transactions over \$500 had fallen from a high a year earlier of over \$36 million per month to less than \$2 million per month. Especially steep declines in early 2005 and early 2006 came after damming warrant interdictions. At the same time, the receive-to-send ratio of transactions at the 10 highest volume wire-transfer locations fell from about 100 to one to about three to one.

There is no accounting for such a dramatic change apart from the conclusion that a substantial amount of illegal funds were being wired into Arizona. Unfortunately, the drying up of the Arizona wire-transfer business by no means meant that human smuggling through Arizona had stopped. The cartel agents simply changed their payment procedures and smuggling continued. Smugglers started "triangulating"—having their payments wired to a confederate just south of the border, who would pick up the money and phone the drop house operator in Arizona to confirm that payment had been received, allowing the release of the smuggled person. Although having tens of millions of dollars in cash flooding small Mexican border communities had undoubted risks, it kept the funds away from Arizona authorities.

***...the drying up of the Arizona wire-transfer business by no means meant that human smuggling through Arizona had stopped. The cartel agents simply changed their payment procedures and smuggling continued.***

Continuing to go after the money, Arizona law-enforcement officials obtained a damming warrant to seize wire transfers sent from specified "corridor states" to locations in northern Mexico, just south of the Arizona border. The seizure order was only in effect for three days, but took in \$200,000 of suspect transactions before an Arizona judge shut it down. The Arizona Supreme Court eventually ruled that a state court did not have jurisdiction to issue a warrant for seizures outside the territorial limits of the state.

By the fall of 2009, the Arizona Attorney General's Office and Western Union, by far the largest volume transmitter of cash by wire in the world and into Mexico, began to seek a way to stop multiple ongoing legal actions between them. In February 2010, an agreement was reached. All lawsuits were dismissed and Western Union agreed to make sweeping changes to increase adherence to federal requirements and to more aggressive reporting of suspicious transactions by their agents. A fund was established to pay for the changes and a monitor appointed by the court to make sure the new procedures would go into effect. Perhaps most important, all the data involving unusually large wire transfers for the past five years and going forward would be made available to law enforcement—state, local, and federal.

Finally, and the capstone to this effort to increase border security, Western Union contributed \$50 million to a fund which would make competitive grants to local and state law-enforcement efforts to attack money laundering and other border-related crimes. The Southwest Border Anti-Money Laundering Alliance was established with this money and the Executive Board selected Kip Holmes as its executive director. The wire-transfer data has been flowing to the Alliance since November 2010 and is being analyzed by their agents. Promising information is passed on to the appropriate law-enforcement agencies (state, federal, and the PGR in Mexico) for further investigation. Significant improvements in border security are being funded by the Alliance.

#### **Beyond Arizona: Next Steps**

Arizona has done about all a single state can on the anti-money laundering front. We identified a serious criminal problem, developed a successful investigation/prosecution technique, and changed smuggler behavior, at least in Arizona. But the next step must be national. Using the same leads Arizona derived from wire-transfer data, federal authorities are in an ideal position to coordinate among the states and with Mexican law enforcement to close down the criminal exploitation of the wire-transfer system. Nothing of the kind has happened, yet.

I testified several times before Congress urging increased action to fight money laundering, most recently in July of 2010. The U.S. Governmental Accountability Office (GAO) that same month recommended that the Department of Homeland Security should study the Arizona successes in tracking and seizing wire transfers:

A second opportunity involves assessing the financial investigative techniques used by an Arizona Attorney General task force. The task force seized millions of dollars and disrupted alien smuggling operations by following cash transactions flowing through money transmitters that serve as the primary method of payment to those individuals responsible for smuggling aliens. By analyzing money transmitter transaction data, task force investigators identified suspected alien smugglers and those money transmitter businesses that were complicit in laundering alien smuggling proceeds.<sup>10</sup>

In spite of this strong GAO endorsement, there has been no adoption of the Arizona model. After almost two years, no convictions. No indictments. Just rumors of investigations and hints in SEC filings give hope that something may be changing. Considering the treasure trove of new data is available to facilitate these investigations and better track organized criminal activity and seize their money, the lack of action is very disappointing.

It is especially frustrating because the federal government has an opportunity to use the wire-transfer data in ways that state officials never could. They can “up stream” an investigation. When a suspect wire transfer came to our attention in Arizona, we could seize it and prevent the cartels from getting the money. We could not go up stream to check out the sender in another state to find out what other criminal enterprises that person or enterprise might be conducting. The federal government, however, can do exactly that and cast a wide net against criminal behavior.

Unfortunately, not only is there little positive movement by federal authorities in combating illegal wire transfers, but some money transmission agents appear to be actively evading federal rules.

These companies collectively processed billions of dollars in wire transfers last year to Mexico. The companies require very little identification from senders of wire transfers under \$1,000, just a name. Other specific identifiers such as a birth date, driver's license, or address are not required. Furthermore, these companies do not seem to be particular about the qualifications of the subagents in Mexico who receive their wire transfers. Subagents may not even be known to the U.S. transmitter. They could be criminals with long records and the U.S. company would not know.

Hypothetically, under such lax oversight, a cartel operative could set up as a receiving subagent in Mexico and then wire funds from the United States illegally by "structuring"—that is, breaking large payments into multiple small transmissions. If the receiving agent is a money launderer, the names of real people would not be needed. Any list of fictitious names would do. The receiving agent could divide the amount of money that has to be moved out of the United States among a list of names in varying amounts. The names and corresponding amounts would then be sent to a confederate in the U.S. who would send the requested wire transfers to the receiving agent, all in small, apparently legitimate, and facially unrelated transactions. By structuring the transmission, and with the cooperation of the sending agent, the sender can avoid the \$10,000 reporting requirement, even if the total amount sent is in the hundreds of thousands of dollars. The receiving agent reaggregates the funds and passes them to the cartel.

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actively evading  
federal rules.***

Such techniques can effectively disguise the movement of large amounts of cash. The hypothetical money laundering situation described above is further exacerbated because, although Western Union subagents are exclusive to that company, other wire-transfer companies allow their subagents to represent many different money transmitters. Thus, a single operator could be a subagent for several transmission companies, allowing a large transaction to be split not only among a large number of recipients, but among several different carriers, structuring the money transfer even more effectively. When a sender can coordinate with the receiving agent, effective control over international wire transfers virtually disappears. Eventually, one hopes that FinCEN, a division of the Department of the Treasury, would notice a large flow of funds to a mysterious location that had little or no economic reason to receive so much money. But FinCEN has been planning to monitor international wire-transfer data for about eight years and the system is still not operational.

Most international wire-transfer activity is made up of millions of legitimate transactions. The money launderers are tiny needles in a huge haystack. But without careful identification requirements on each transmitter and pick-up agent, and alert action by the transmission agents in spotting suspicious activity and filing Suspicious Activity Reports (SARs), human smugglers and other criminals are able to hide their cash transfers amid the forest of legitimate wires. Companies that operate outside the anti-money laundering rules present a huge challenge, not only to the effectiveness of the 2010 Western Union settlement with the border states, but to whether this country can enforce its anti-money laundering laws at all.



## Money Laundering Technologies and Techniques

### Currency Brokers

More and more, illicit cross-border money transactions are done by currency brokers—specialists who can divide a large sum into numerous small amounts that are virtually unnoticeable and can be aggregated at the receiving end. The currency broker has far more options for money laundering than the wire-transfer agent, including bank accounts set up in fictitious names and trade accounts of companies that either do export/import activity and can hide laundered transactions among many legitimate ones, or shell corporations set up to look as if they are involved in cross-border trade.

According to a GAO report, alien smugglers increasingly use “funnel accounts,” deposit accounts opened to receive payments for smuggled goods and services. Federal officials in Arizona report large-scale money laundering through major U.S. banks that have a nationwide branch and automated teller machine (ATM) network. A deposit account opened by smugglers in Arizona would receive payments from the sponsors of smuggled aliens through an ATM or bank office from anywhere in the United States. The alien smuggler then quickly withdraws the money and closes or abandons the account, leaving virtually no trace.<sup>11</sup>

### Trade-Based Money Laundering and the Black Market Peso Exchange

Cross-border businesses have always been tempted to disguise currency smuggling amid the flow of legitimate commerce. Booking an extra cost for the purchase of goods in Mexico can move dollars across the border and reduce taxable income. A more sophisticated version of the money-brokering process is found in the current evolution of the Black Market Peso Exchange (BMPE). Starting out as the market for illegal currency in Columbia, the original BMPE was taken over by Colombian drug cartels to repatriate drug proceeds in the 1990s. The Peso Exchange has become the default description of almost any procedure that uses product shipments to avoid currency restrictions and reporting, whether it touches an actual Exchange or not.

The pesos paid for U.S. goods (a tractor trailer truck, for example) sold in Mexico can take some surprising turns in the currency conversion process. Instead of converting pesos to dollars through a legitimate currency exchange with formal reports of the transaction, direct payment is sometimes made to the truck seller by third parties, unrelated to the purchaser—payments which are the dollar proceeds of illegal drug sales in the U.S. The pesos needed to purchase the product in Mexico are paid to the cartel’s money broker (usually at a discount from the legal exchange rate) and the purchased truck crosses the border to complete the transaction.

Sometimes, such transactions take place without moving any goods at all. A warehouse north of the border issues an invoice to someone wishing to convert drug dollars to pesos. The invoice shows a “purchase” of a Mexican product (perfume, for example) and the dollars to be converted are paid to the writer of the invoice who then “purchases” product in Mexico and receives a receipt in pesos for the alleged “import” goods. The pesos are paid to the cartel’s money broker by a third party who needs dollars in the U.S. and is looking for a good discount. No goods change hands, only cash

and paperwork. The business in the U.S. keeps some of the invoiced product on hand in case of inquiry. It looks like a lot of perfume has crossed the border. But in reality, only cash does.<sup>12</sup>

#### Stored Value Instruments or Prepaid Access Cards

One particularly mystifying failure of our nation's border defense is the inability or unwillingness to monitor and control the cross-border movement of "stored value" devices. These are innocent-looking plastic cards that can contain thousands if not millions of dollars and are not covered by any currency disclosure requirements at the border. They resemble credit cards, but have access not to a credit account at a financial institution, but to a specific amount of cash "stored" on the card in a microprocessor chip or in an account accessible through the card. Along with other digital devices, these cards are the currency of the future. Throughout the economy, more and more payments are being made with stored value cards. From a volume of only \$6.2 million 10 years ago, the use of prepaid access cards exploded to over \$800 billion in 2008, with projections as high as \$1.3 trillion for the current year.<sup>13</sup> One large user of these cards is the United States government, which uses them for a wide variety of payments, including virtually all public assistance.

There are several types of stored value devices. The least sophisticated contain a fixed amount and are activated by a merchant. The funds on the card are drawn down as purchases are made until the card is empty. This type of card is not rechargeable. Commonly known as gift cards, they are available at every supermarket checkout counter. This version is not a problem (unless a smuggler is carrying hundreds of them). More problematic are the cards that can be refilled from a computer or ATM. These are, in effect, little bank accounts and the balances stored on them are not apparent without a scanner equipped with the appropriate software. These cards can carry a large balance that can be downloaded after crossing the border. The cards can be passed easily from hand to hand, making them essentially anonymous.

***Stored value devices are not listed as monetary instruments or otherwise subject to declaration at the border, even though they could contain many times the \$10,000 disclosure threshold.***

Under U.S. law, no traveler may take over \$10,000 in cash or cash equivalents, called "monetary instruments," into or out of the United States without declaring that money at the border. The definition of "monetary instruments" is evolving. It includes travelers' cheques, bearer bonds, some letters of credit, and other documents readily convertible to cash. Stored value devices are not listed as monetary instruments or otherwise subject to declaration at the border, even though they could contain many times the \$10,000 disclosure threshold. This loophole, clearly identified by federal authorities over six years ago, provides smugglers with a massive opportunity to evade anti-money laundering security at the border. Since there is no obligation to disclose, border officials have no authority to even inquire how much value is stored on a stored value instrument, and no way to read any cards they happen to spot.

A third type of prepaid access device provides access to an account through its magnetic strip (or other electronic mechanism) and a password. These are readily transferable and can be used with participating financial institutions on both sides of the border. Presumably, it takes a higher degree

of identification to open the original account than is the case with a rechargeable card, making these instruments somewhat less desirable to smugglers. However, the low level of identification that has been required by some financial institutions does not pose an obstacle for money launderers. These cards have recently been renamed “prepaid access” devices by federal regulators to emphasize the fact that they usually do not actually store value on the device, but more often provide access to an account.

### **Attempts to Control Money Laundering Technologies**

The huge hole that stored value devices pose to our anti-money laundering efforts cannot be a surprise. In 2006, the National Drug Intelligence Center (NDIC) in its Assessment of stored value cards warned that prepaid access devices constituted a significant loophole in our border defenses.

Key judgments from the NDIC Assessment include:

- Prepaid stored value cards—a product experiencing explosive growth—provide an ideal money laundering instrument to anonymously move monies associated with all types of illicit activity, without fear of documentation, identification, law enforcement suspicion, or seizure. Therefore, it is very likely that drug traffickers and criminals alike are exploiting and will increasingly exploit the convenience and anonymity of prepaid stored value cards to launder and move funds associated with their illicit enterprises.
- Prepaid stored value cards cannot be seized for Report of International Transportation of Currency or Monetary Instrument (CMIR) violations; are loosely regulated; function as remittance cards; frequently provide cardholder anonymity when individuals are obtaining cards or adding value to cards; often have liberal daily limits on total card value, reloading, withdrawal, and spending of funds; and feature fees that are generally consistent with or lower than the normal “cost” of laundering money.
- Prepaid stored value cards are, in many ways, superior to established methods of money laundering and money movement—specifically, the use of money transmitters and bulk cash smuggling—and may replace these methods under certain conditions.
- Drug traffickers and other criminals will most likely use prepaid stored value cards in lieu of electronic money transfers because the fund-transfer processes are similar and use of the cards provides additional benefits.
- Prepaid stored value cards are an advantageous alternative to bulk cash smuggling via package delivery services or couriers on board commercial conveyances (airplanes, buses, trains)—methods that carry a significant risk of detection by law enforcement.
- It is much less likely that prepaid stored value cards will replace traditional bulk cash smuggling by private or commercial vehicle—methods that currently appear to be adequate to fulfill traffickers’ needs.
- U.S. regulatory action alone will not be sufficient to suppress the money laundering threat posed by prepaid cards, since cards issued by non-U.S. banks or other institutions

can be used domestically to transfer funds, make purchases, or access cash at automated teller machines (ATMs).<sup>14</sup>

Among other conclusions, the Assessment recommended specific regulatory changes:

The U.S. Department of the Treasury has acknowledged the need to modify and clarify existing regulations related to the prepaid stored value card industry; in fact, FinCEN recently announced that it will issue new regulations designed to clarify the roles and obligations of issuers of prepaid cards. Although it is not yet clear what actions will be taken, **there is an obvious need** (emphasis added) to implement several changes to existing regulations. In order to enable seizure of prepaid stored value cards with a monetary value of more than \$10,000, stored value should be included in the definition of monetary instruments for CMIR purposes. Because it is often difficult to distinguish between traditional debit cards and network-branded prepaid stored value cards, a requirement designed to distinguish the appearance of open and semi-open system prepaid stored value cards would enable law enforcement agencies to better identify suspicious cards. Due diligence procedures required of financial institutions under the USA PATRIOT Act—such as identity verification and comparison of customers' identities against names of known terrorists—should be applied to prepaid stored value cards because open and semi-open system prepaid stored value cards are used in a manner that approximates a traditional checking account. Additionally, the imposition of compliance programs such as those that apply to money transmitters—including customer identification, recordkeeping, and SAR-MSB reporting requirements—would empower law enforcement investigations by allowing agencies to access information such as cardholders' identities, to track transactions, and to identify patterns of suspicious activity.<sup>15</sup>

In spite of the above dramatic conclusions, FinCEN did not act in 2006. As part of credit card reform, Congress ordered Treasury to write regulations for prepaid access devices by February 2009. Nothing happened. When regulations were finally drafted in 2010, they failed to cover the international movement of the cards. The final rule took effect on September 27, 2011. It changed the official name of the cards to “prepaid access devices” and made some long-overdue changes in how the cards are reported by the issuer and monitored, but the rule did not close the international money laundering loophole. Only now is the rule change for international transportation of such devices being officially proposed.

Retired U.S. Representative Gabrielle Giffords introduced legislation to close the prepaid access loophole in May 2010.<sup>16</sup> That proposed legislation defined prepaid access devices to include developing technologies for money transfers such as cell phones; established a disclosure requirement for prepaid access devices transported out of the country when they, or they in combination with cash or monetary instruments, total more than \$10,000; required registration of prepaid access programs; mandated that law-enforcement officers have the software needed to determine the value accessible with devices they encounter; subjected non-conforming prepaid access devices to forfeiture; and established criminal and civil penalties for violations. Although the bill died at the end of the 111<sup>th</sup> Congress, some of its provisions were included in the September 2011 final rule from Treasury. The broader objectives of the bill, however, including the need to control international movement of prepaid access devices and provide meaningful penalties for

abuse, remain undone. Senators Grassley, Levin, and Feinstein have introduced a less comprehensive effort to control the international transport of prepaid access devices in the 112<sup>th</sup> Congress.<sup>17</sup> But no action has been taken on that legislation, either.

The prepaid access industry has fought any attempt to require disclosure of card balances, to allow official examination of the cards with scanners, or even to identify the cards visually in a way that makes clear that they are different from debit and credit cards as was recommended by the Department of Justice Assessment. Since credit-card companies such as Visa and MasterCard are the primary issuers of prepaid access cards, there is no way to tell by observation what type of cards a cartel courier is carrying. I have spoken to Treasury officials on this subject and testified before Congress to urge the elimination of the stored value or prepaid access card loophole. In 2009, the 18<sup>th</sup> annual Southwest Border Money Laundering Conference in Phoenix was dedicated solely to the threat posed by prepaid access devices. Treasury agents attended this and other anti-money laundering conferences where the urgent need to fix this problem has been discussed.

***The federal government has been stubbornly unwilling to patch the hole that prepaid access devices create in our anti-money laundering regulations.***

The federal government has been stubbornly unwilling to patch the hole that prepaid access devices create in our anti-money laundering regulations. Federal inaction is very hard to understand. True, the ideal fix is statutory and not regulatory, making it more complicated and time consuming. Statutes would have to be passed to impose the obligation on travelers crossing the border to declare any prepaid access devices in their possession or face criminal consequences. Border agents must be supplied with card readers able to verify the amount contained on the cards or in accounts accessible through the cards. But, surprisingly, the agency in charge of preventing money laundering has not pushed legislation and has conspicuously dragged its feet on regulating the international transportation of these cards, even in the face of urgent law-enforcement demands and Congressional mandate.

### **What Next?**

Some long overdue efforts to tighten up the criminal laws against money laundering began in 2011. The Administration has put forward an anti-money laundering and forfeiture legislative package which it calls the Proceeds of Crime Act (POCA). In hearings on February 8, 2012, before the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, officials from the Departments of Justice and Treasury testified in support of the POCA provisions, saying they are needed to combat transnational organized crime and international money laundering. Their analysis indicating that money laundering is a major threat to our financial system was thorough, but their suggestions for remedy were not.

The Administration proposed the following changes to the criminal statutes under POCA:

- harmonizing the definition of money transmitting businesses (including more *casas de cambio* and check cashers).
- extending wiretap authority to schemes reliant on electronic communications (wiretaps are often the most productive information sources in money laundering investigations).
- confronting the problem of commingled funds (reversing the tendency of courts to assume that in a commingled account the dirty money comes out last).
- promoting corporate transparency (requiring proof of beneficial ownership when opening bank accounts).
- extraterritorial application of the RICO and VICAR statutes (increasing the predicate offenses overseas that would prevent the proceeds being invested in the U.S.).

While these are worthwhile improvements, at best they are on the margins, tightening up definitions and expanding the list of predicate offenses. Plus, most of the suggested changes involve cutting down on dirty money coming into the United States, not keeping it from flowing out. If all the POCA reforms were enacted tomorrow, big holes in the anti-money laundering fabric would remain. Although representatives of Justice and Treasury both testified at a recent Congressional hearing that prepaid access cards were a significant smuggling problem, neither suggested doing anything about it. Especially surprising is that the Department of Justice, which so clearly identified the threat in 2006, has not included reform of prepaid access cards in POCA.

***Generally speaking, the failures of the anti-money laundering effort are not because of inadequate statutes, but a failure of enforcement.***

Prosecutors in federal court today operate under tight restrictions on when they can seize the cash they believe to be part of a criminal scheme. Under Arizona law, it is far easier to hold suspected funds pending further examination of their source.<sup>18</sup> Giving this authority to federal agents would put important teeth in their anti-money laundering efforts. However, POCA contains no recommendations concerning the lack of effective authority to detain and ultimately seize funds when there is a reasonable suspicion that they are the proceeds of a crime.

Another area in which state law could be a model for federal law relates to the consequences for giving false information in connection with a financial transaction. In Arizona, if you give a false name when you open an account at a financial institution, the money is subject to forfeiture.<sup>19</sup> If you give a false social security number when you use a money transmitter, the money is forfeitable.<sup>20</sup> In both cases, the depositor and the sender have committed money laundering under state law. If someone tries to bribe a money transmitter or other employee to ignore a reporting requirement, he or she has committed money laundering and the money is forfeitable.<sup>21</sup> If a money transmitter or an employee accepts false personal identifying information from any person or incorporates false personal identifying information into any report, it is a money laundering violation and the money is forfeitable.<sup>22</sup> The same clear forfeiture authority is not contained in

federal law. These statutory changes would be very valuable to a federal prosecutor battling money laundering.

### **Time to Clamp Down on Money Laundering in All Its Forms**

The *Manchester Guardian* reported in April 2011 how hundreds of billions of dollars in “wire transfers, traveler’s cheques and cash shipments” were moved illegally through Wachovia Bank and across the U.S.-Mexico border in 2005 and years preceding. These funds undoubtedly paid for murder and mayhem in Mexico, yet an investigation into Wachovia Bank’s procedures resulted in a fine of less than 10 percent of the money laundered and no criminal prosecutions.<sup>23</sup> As one commentator rightfully observed, the best way to end these insidious practices is the “rattling of hand cuffs in some bank boardrooms.” Yet one of the consistent factors in money laundering prosecutions is the lack of penal consequences. Major financial institutions continue to be less than diligent in enforcing anti-money laundering regulations and some respond to law-enforcement subpoenas in ways that undercut the investigations by closing out the subject account and sending the deposited funds back to the depositor.

***Until government agencies, especially Treasury, get more serious about cutting off the illegal international flow of funds, we can never say we have a “secure” border.***

Generally speaking, the failures of the anti-money laundering effort are not because of inadequate statutes, but a failure of enforcement.<sup>24</sup> Again and again, huge amounts of funds flowing illegally out of this country could be stopped, if financial institutions and government agencies focused on the problem. But the prevailing attitude is permissive of violations and reluctant to sanction violators. Of course, there will always be sophisticated nuances and complex trade relationships which can be exploited to move money illegally, but the billions of dollars going to the drug cartels are not flowing through nuances. They are going through the front door of the financial system, through bank accounts, large trade transactions, prepaid access devices, and wire transmissions. As opponents, the cartels have not made the problem any easier, proving to be extraordinarily innovative and opportunistic. They have mastered the international financial system and exploited it to their great advantage.

The U.S. government must enforce existing anti-money laundering provisions and quickly close the identified loopholes to stop (or at least slow down) the cash flowing to the cartels. Until government agencies, especially Treasury, get more serious about cutting off the illegal international flow of funds, we can never say we have a “secure” border. Stopping less than one percent of the opponent’s cash smuggling transactions should never be considered a good job. Especially when the money pouring across the border is wreaking such havoc in Mexico and making a mockery of the U.S. border defenses.

With the Calderon Administration in Mexico in its last months in office, the best chance to strike back against the cartels is rapidly disappearing. The United States should be making every effort to strengthen Mexico’s hand right now. The most effective means available is to stop the cash that

makes the cartels so strong. We can fix the “broken” border and stop the bloodshed in Mexico—by just following the money.

## Endnotes

- <sup>1</sup> Eric Tucker, “Cash Smuggling from Mexico Presents US With Challenge,” *Huffington Post*, February 12, 2012.
- <sup>2</sup> National Drug Intelligence Center, *National Drug Threat Assessment 2009*, December 2008.
- <sup>3</sup> United Nations Office on Drugs and Crime, *Estimating Illicit Financial Flows Resulting from Drug Trafficking and Other Transnational Organized Crimes*, October 2011, p. 21.
- <sup>4</sup> Testimony of Jennifer Shasky Calvery, Chief, Asset Forfeiture and Money Laundering Section, Criminal Division, Department of Justice, before the Subcommittee on Crime, Terrorism and Homeland Security, Committee on the Judiciary, U.S. House of Representatives, February 8, 2012.
- <sup>5</sup> United Nations Office on Drugs and Crime, *The Globalization of Crime: A Transnational Organized Crime Threat Assessment*, 2010, p. 66.
- <sup>6</sup> Mr. Holmes, a Harvard-educated former Portland cop, has focused his career in law enforcement on detection and prosecution of money laundering. He drafted the Arizona money laundering laws, among the toughest in the nation, and led the Financial Crimes Task Force at the Arizona Attorney General’s Office. Today, Kip is the Director of the Southwest Border Anti-Money Laundering Alliance.
- <sup>7</sup> At the beginning of these investigations, agents did not pose as human smugglers, or coyotes, because being a coyote was not yet a state crime.
- <sup>8</sup> The 1991 money transmitter regulation statutes, 6-1201 through 6-1242, and—in particular—6-1241(J), relating to GTOs, and the 2002 amendments to it adding (K).
- <sup>9</sup> The GTO provisions are 6-1241(J) and (K).
- <sup>10</sup> U.S. Government Accountability Office, *Alien Smuggling: DHS Could Better Address Alien Smuggling along the Southwest Border by Leveraging Investigative Resources and Measuring Program Performance*, GAO-10-9191, July 22, 2010, p. 6.
- <sup>11</sup> U.S. Government Accountability Office, *Alien Smuggling: DHS Needs to Better Leverage Investigative Resources and Measure Program Performance along the Southwest Border*, GAO-10-328, May 2012 p. 35.
- <sup>12</sup> See, for example, Juan Aguilar, “In Laredo, Was A Criminal Enterprise Bathed in Sweet Perfume?” *Texas Tribune*, November 12, 2011.
- <sup>13</sup> This information is from the materials prepared for the 2009 Southwest Border Money Laundering Conference.
- <sup>14</sup> U.S. Department of Justice, National Drug Intelligence Center, *Assessment: Prepaid Stored Value Cards: A Potential Alternative to Traditional Money Laundering Methods*, Product No. 2006 R0803-001, October 31, 2006, p. 1.
- <sup>15</sup> *Ibid.*, p. 7.
- <sup>16</sup> H.R. 5127, 111<sup>th</sup> Congress, 2d Session.
- <sup>17</sup> SB1731.
- <sup>18</sup> This is because ARS 13-4304 defining property subject to forfeiture applies to property subject to forfeiture under in personam causes of action such as ARS 13-2314 (D) and 13-4312 and property subject to forfeiture as substitute assets under ARS 13-4313(A) and/or ARS 13-2314(D)(6)(d) and (E), or under a special treble substitute assets provision relating to money laundering under ARS 13-2317(D), and because all property subject to forfeiture is subject to seizure for forfeiture under ARS 13-4305.
- <sup>19</sup> ARS 13-2317(A)(6-8).
- <sup>20</sup> ARS 13-2317(A)(7)..
- <sup>21</sup> ARS 13-2317(C)(1).
- <sup>22</sup> ARS 13-2317(B)(4),(5) & (9).
- <sup>23</sup> Ed Vulliamy, “How a big US bank laundered billions from Mexico’s murderous drug gangs,” *Manchester Guardian*, April 3, 2011.
- <sup>24</sup> Except for the failure to include prepaid access cards among the funds which must be disclosed at the border and the difficulty seizing cash assets in federal actions.



## **SECURING THE BORDER: UNDERSTANDING AND ADDRESSING THE ROOT CAUSE OF CENTRAL AMERICAN MIGRATION TO THE UNITED STATES**

**WEDNESDAY, MARCH 25, 2015**

U.S. SENATE,  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:02 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Ernst, Carper, and Peters.

### **OPENING STATEMENT OF CHAIRMAN JOHNSON**

Chairman JOHNSON. This hearing is called to order.

I want to thank all the witnesses for your thoughtful testimony. We have got a lot of witnesses, so I got to read a bunch of testimony last night. I appreciate it. It is very illuminating.

The purpose of these hearings—this is our third in a series of hearings on border security and a broken immigration system—really is to just lay out the reality. I come from a manufacturing background and you just cannot solve a problem unless you really identify it properly, define it, understand the reality, acknowledge it, admit the problem. So, that is what we are going to be talking about.

This particular hearing is titled, “Securing the Border: Understanding and Addressing the Root Causes of Central American Migration to the United States.” Of course, we all witnessed the surge last year. It created a real humanitarian crisis. I was down in McAllen, Texas, with Senator Carper and Senator Sasse, and I do have to say, as we saw how Customs and Border Protection (CBP), how our civil servants rallied and responded to the problem, it was really inspiring. I mean, they probably cut some bureaucratic corners, which they should have done, because they really responded well. So, again, I just want to kind of call them out. They did a fabulous job and they will continue to do a fabulous job.

I do have a chart<sup>1</sup> up here real quick, and this is actually—the numbers are taken out of Mr. Noriega’s testimony talking about the history of unaccompanied children coming in from Honduras, Guatemala, and El Salvador, and I do have a line of demarcation

<sup>1</sup> The chart submitted by Senator Johnson appears in the Appendix on page 734.

marked there, which was the Deferred Action on Childhood Arrivals (DACA), which I realize did not apply to children coming to this country. That was really for children who came in, I believe it was before 2007. But, that was not the message that was delivered in Guatemala.

So, I think if you take a look at cause and effect, I think you would be hard pressed not to at least consider the fact that that deferred action, that policy of this Administration, did incentivize people to come to this country illegally and subject themselves and their children to a pretty horrific journey. So, we need to understand that.

But, we also need to understand, and I am sure Senator Carper will speak to this, is the conditions in Central America. I would come. It is a rational economic choice. I mean, this is the land of unlimited opportunity. We understand that. What we need to do is we need to make that a legal process.

So, if we can lay out the reality of the problem and really address all the components—and this is just one of the components, this is just going to be one of these hearings—we are going to be in a far better position to actually go to the root cause, and Senator Carper and I are both big into root causes, and so we can start, hopefully, to pass some pieces of legislation that will start addressing the individual components and put this Nation on a path to a functioning legal immigration system.

I have a written statement for the record<sup>1</sup> that I will ask to include, without objection.

Senator CARPER. Oh, oh, oh—

Chairman JOHNSON. There you go. Really bipartisan up here. [Laughter.]

And, I will turn it over to our Ranking Member, Senator Carper.

#### **OPENING STATEMENT OF SENATOR CARPER**

Senator CARPER. And I also have a statement<sup>2</sup> I would ask unanimous consent to be included in the record.

Yesterday, one of our witnesses was General Barry McCaffrey, and when he was the Nation's Drug Czar, he came to Wilmington, Delaware. I was Governor then. And, he wanted to see a prison that we—called Gander Hill Prison in almost downtown Wilmington. We had a couple thousand inmates. And, somehow, we had figured out how to reduce the rate of recidivism by half, from about 75 percent down to about 35 percent. He wanted to know why.

And, we ended up—before we toured the prison, he came in, brought an ABC News camera crew, and before we toured the prison, we went into a room about a quarter of the size of this room and we met with 50 inmates. They were all in their white suits. And, a bunch of them, I knew their parents, knew their families, and had spoken at their schools and been at their churches. And, we had about half an hour to kill with them before we did the prison tour and learned about the program.

<sup>1</sup> The prepared statement of Senator Johnson appears in the Appendix on page 645.

<sup>2</sup> The prepared statement of Senator Carper appears in the Appendix on page 646.

And, I said, General McCaffrey, why do we not just talk to these guys and find out how they ended up here in this prison. And, so, about five or six of them spoke for maybe 5 minutes apiece to talk, to answer the question, how did they end up in that prison.

They all told pretty much the same story. "I was born when my mom was young. I never knew my dad. By the time I got to kindergarten at the age of five, the other kids in my class knew not just their alphabets, they could actually read. They knew their numbers. They could do a little bit of addition and subtraction. And, as it carried on from there, they went faster and faster; I went slower and slower. And, eventually, I am in the third grade and acting out, in the fourth grade out in the hall by my desk, and in fifth grade, sixth grade, in the principal's office, in seven, eighth grade, suspended. As soon as I was older, I got expelled and never came back."

One guy said, "I ended up on the outside. I was not a good athlete. I was not popular with girls. No talents or skills. Did not know how to really support myself. I wanted to feel good about myself and I learned if I could take drugs or alcohol, I could feel good about myself, and so that is what I did. I broke the law, got caught, and I ended up in this prison."

The root causes there are pretty well demonstrated in the responses from all those prisoners, and we decided then and there that we were going to address root causes, not just the symptoms of problems in Delaware, but really starting with the basic building block for a society: Families. How do we strengthen families, make sure our kids are not bringing kids into this world, and on and on and on. And, actually, pretty successful, I might add.

Ever since then, I have been a real big believer in root causes, not just addressing symptoms of problems, but root causes. We spent a quarter-of-a-trillion dollars in the last 10 years strengthening our border defenses with Mexico. We could probably, easily, spend another quarter-of-a-trillion dollars.

But, an analogy I used yesterday, this is a little bit like the needle in the haystack. The needle is people trying to get in illegally, or trying to get contraband in illegally, and the haystack is all the number of people who are trying to get there. I said, the key for us is to make the haystack smaller and to develop better techniques of finding those needles, if you will.

And, part of it is, of making the haystack smaller, is reducing the number of people who feel compelled to bail out of Honduras, Guatemala, and El Salvador to try to get to our country, because there is lack of hope, lack of opportunity, fear, corruption, hopelessness.

And, we have seen a situation a little bit similar to this in Colombia 15, 20 years ago, where we had a failed nation. A little bit before that, we had a bunch of gunmen who rounded up a bunch of Supreme Court justices—remember this? They shot and killed 11 of them just like that. And, you had the leftist guerrillas there. You had the crimes and drug narco guys, and a failed nation. And, somehow, they turned it around, and they did it, but we helped them. And, today, they are in a position to help Guatemala, Honduras, and El Salvador. Mexico is in a position to help, as well.

But, as we continue to find ways using force multipliers to make the 21,000, 22,000 Border Patrol men and women we have on the

border more effective to make all those folks and another 22,000 people that are literally working in the ports of entry on the border of Mexico, how do we make them more effective? We use it with technology. Drones have done well. Tethered aerostats have done well. Towers on the ground, mobile towers, stationary towers, stationary aircraft with the vehicle and dismount exploitation radar (VADER) systems, you name it. There is a lot that we can do faster, more places, bring in boats into the Rio Grande River. There is a lot of stuff we can do in terms of force multipliers.

And, my hope is that, ultimately, we will do some immigration reform and that would be a way to reduce the size of the haystack, as well.

But, we have an obligation, I think, moral obligation, since given our addiction to drugs, methamphetamines, heroin, cocaine, which helps make the lives in these three countries miserable—given the fact that we contribute to their misery, maybe we have an obligation, a moral obligation, to figure out how to contribute to their success.

It is not all on us. And, I am encouraged by the Administration, the President, and the Vice President is sort of riding point on this, is to figure out what is working down there. What can actually work. And, I will give you one example and I will stop.

I was in Guatemala about a year ago. I have been in all three countries down there a couple of times. And, I was in Guatemala meeting with the President of Guatemala and I said to him, Mr. President, I am told that in your prisons here, this is a place where, frankly, police do not police, prosecutors do not prosecute too often, judges do not administer justice, correctional systems do not correct behavior. And, I said, I was meeting with the President in one of the last meetings before I came home on a Congressional Delegation (CODEL) and I said, Mr. President, I understand that the drug lords in prison, in your prisons, they get access to cell phones. They can actually do their business while they are in prison, incarcerated. I said, did you know that?

And he kind of, like, shrugged, and I said, and did you know that there is actually a technology we have in our prisons in America where you can actually put a cone of silence so that people with cell phones in a prison cannot communicate in or out? Did you know that? And, not much of a response. And, I said, and did you know you have those systems in your prisons, as well? And, kind of not much of a response. And, I said, and you know you do not use them.

Well, we heard in our meeting that we had yesterday with a bunch of our Ambassadors, U.S. Ambassadors to Honduras, Guatemala, El Salvador, and Belize, that is changing and we are part of making sure that they have supermax down there and the bad guys are in the supermaxes and they cannot communicate. They do not get the cell phones. And even if they could, they could not use them.

That is just one of the many things that we need to do to help restore the rule of law. We can help. They have got to do it in the end, and part of what is needed is really strong, courageous leadership, because the people who stand up and do these tough things,

they really put their lives on the line. We know that and they know that and we need to support them.

The key is trying to meet our moral obligation to these folks. They are our neighbors. Golden Rule, who is my neighbor? They are our neighbors. But, to do so in a cost effective way. That is the challenge for us. Find out what works. Do more of that.

Thanks very much.

Chairman JOHNSON. Thank you, Senator Carper.

It is the tradition of this Committee to swear in witnesses, and if members of both panels could stand and raise your right hand.

Do you swear the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. KANDEL. I do.

Mr. NORIEGA. I do.

Mr. FRANCO. I do.

Mr. OLSON. I do.

Mr. BERSIN. I do.

Mr. PALMIERI. I do.

General TOVO. I do.

Chairman JOHNSON. Thank you.

Our first witness is William Kandel. He is an Analyst in Immigration Policy with CRS's Domestic Social Policy Division. He covers family based immigration policy, unaccompanied alien children (UAC), inter-country adoptions, naturalization, immigrant integration, and the demography and fiscal impacts of the foreign-born population.

Senator CARPER. Are you saying he is a demagogue? [Laughter.]

Chairman JOHNSON. I am going to have to read these beforehand. [Laughter.]

Prior to CRS, he conducted demographic and social science research on rural America and farm workers for the USDA Economic Research Service. Mr. Kandel.

**TESTIMONY OF WILLIAM A. KANDEL,<sup>1</sup> ANALYST IN IMMIGRATION POLICY, CONGRESSIONAL RESEARCH SERVICE, U.S. LIBRARY OF CONGRESS**

Mr. KANDEL. Chairman Johnson, Ranking Member Carper, and Members of the Committee, thank you for the opportunity to testify about last year's surge of unaccompanied alien children. I will be summarizing my written testimony with these brief remarks.

My testimony addresses specific questions given to me by the Committee regarding apprehensions, pending cases, asylum, no shows, and returns and removals. Please note that the data presented in this testimony on UAC outcomes for any given year may correspond to children who were apprehended in a prior year. For example, an asylum decision in fiscal year (FY) 2014 may affect an unaccompanied minor who was apprehended in 2012.

CBP data indicate that 68,500 unaccompanied children were apprehended in fiscal year 2014, over three times the apprehensions in fiscal year 2009. During that 5-year period, the UAC composition, which was first dominated by children from Mexico, shifted to

<sup>1</sup> The prepared statement of Mr. Kandel appears in the Appendix on page 648.

one dominated by children from Guatemala, Honduras, and El Salvador. In fiscal year 2014, CBP also apprehended 68,400 family units, 90 percent of whom also originated from Guatemala, El Salvador, or Honduras.

In fiscal year 2014, about 57,500 unaccompanied minors, or 84 percent of those apprehended, were transferred to the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR). They remained in ORR custody an average of 35 days while awaiting placement. In fiscal year 2014, ORR discharged 87 percent of its unaccompanied minors to family relatives, 9 percent to non-relatives, and the remaining 4 percent back to DHS, largely because they aged out of UAC status.

Data received after my written testimony was submitted to the Committee indicate that in fiscal year 2014, the U.S. Citizenship and Immigration Services (USCIS) received 2,800 requests for UAC asylum. In that year, the agency adjudicated 547 UAC asylum cases and approved 289, or just over half.

As of March 2014, the average wait times for all immigration hearings nationwide was 19 months. However, expected wait times for UAC hearings can extend beyond 19 months.

Data from the Executive Office of Immigration Review (EOIR) covering 7 months, from July 2014 through February 2015, indicate that DHS put 25,100 unaccompanied minors into removal proceedings. Of those, EOIR scheduled 23,800, or 95 percent, for an initial hearing. Of those scheduled, 6,100, or one-fourth, were given a decision by an Immigration Judge. Of the 6,100 decisions, 4,300 unaccompanied minors, or 70 percent, were ordered removed. The remaining 1,800 cases resulted in administrative closings and completions, case terminations, voluntary departures, and one case of immigration relief. For 62 percent of the decisions rendered, the unaccompanied minors failed to appear in court. Those decisions all resulted in removal orders.

Regarding removals, in the first 9½ months of fiscal year 2014, ICE removed 1,457 unaccompanied minors. CBP data received after my written testimony was submitted to the Committee indicate that 95 percent of all Mexican unaccompanied children who were apprehended in fiscal year 2014 were returned voluntarily to Mexico.

This concludes my remarks. Thank you for the opportunity to testify and I look forward to your questions.

Chairman JOHNSON. Thank you, Mr. Kandel.

Our next witness is Ambassador Roger Noriega. He has more than two decades of public policy experience, focusing on U.S. interests in the Western Hemisphere. Ambassador Noriega served as Assistant Secretary of State for Western Hemisphere Affairs from July 2003 to October 2005, and as U.S. Ambassador at the Organization of American States from August 2001 to July 2003. Ambassador Noriega.

**TESTIMONY OF THE HONORABLE ROGER F. NORIEGA,<sup>1</sup> VISITING FELLOW, AMERICAN ENTERPRISE INSTITUTE, AND FORMER ASSISTANT SECRETARY FOR WESTERN HEMISPHERE AFFAIRS, U.S. DEPARTMENT OF STATE**

Mr. NORIEGA. Thank you very much, Mr. Chairman and Senator Carper. I commend the Committee for holding this series of hearings this week focusing attention on the government's fundamental responsibility for securing our borders.

No event in recent years has underscored the vulnerability of our Southwest border as dramatically as the wave of illegal immigrants, many of them children, crossing in record numbers last year. The American people learned quickly how our resources on the border can be overwhelmed, diverting attention from the critical mission of detecting greater threats. Moreover, it underscored the real world consequences of our government sending mixed signals about border enforcement and of potential amnesty at the same time that it fails to engage effectively with our neighbors that are facing rising insecurity and instability.

Mr. Chairman, I have worked on Central America for nearly 30 years and rely on that experience in assessing the root causes of the 2014 border crisis and making several recommendations on how you might bring this problem under control.

First, Mr. Chairman, it is important to recognize that the surge of unaccompanied alien children from Central America's Northern Triangle countries actually began in 2012, as you asserted, when CBP recorded the apprehension of 10,000 unaccompanied children from those three countries, compared to an average of 3,900 in each of the three prior years.

So, although CBP is now recording that the number of UACs encountered is down 42 percent so far this year compared to last year, it is important to remember that that figure in 2014 was five times higher than that recorded in 2012, and 12 times higher than what it was in 2011. We will not have a real handle on this problem until the numbers are back down to where they were 3 or 4 years ago.

My second point, Mr. Chairman, is although insecurity and poverty have driven people to flee the country for decades, I believe that the new pull factors attracting people to make the dangerous trek are of paramount concern because they are entirely preventable.

Last summer, my contacts in Central America reported brazen radio advertising campaigns by alien smugglers drumming up business by claiming that a new "permiso" was being issued to minors reaching U.S. territory, allowing them to stay virtually indefinitely. A Government Accountability Office (GAO) study released last month confirms this aggressive and misleading marketing by alien smugglers, commonly referred to as coyotes.

The increased number of persons being allowed to stay pending hearings under the Trafficking Victims Protection Reauthorization Act (TVPRA) appears to be the origin of this campaign. And, the June 2012 decision by President Obama to defer removal action of childhood arrivals also fueled expectations of mass legalization,

<sup>1</sup> The prepared statement of Ambassador Noriega appears in the Appendix on page 659.

benefiting people, particularly minors, who made their way to a U.S. territory.

Journalist Richard Pollak, who interviewed dozens of people in Guatemala last summer, reported in August, "Coyotes may appear to be uninformed and unsophisticated smugglers, but they pay close attention to U.S. immigration laws. One smuggler asserted, 'Obama has helped us with the children because they are able to stay in the United States. That is the reason so many children are coming,'" That is a smuggler talking, a man who knows his business all too well.

To get ahead of this problem, Mr. Chairman, the President, Congress, and enforcement agencies must work together to ensure the clarity and strict enforcement of U.S. immigration laws.

My third and final point is with respect to the responsibility of regional governments to make their countries safe for their own people. They have proposed a very ambitious development program called the Alliance for Prosperity, and President Obama has proposed that we contribute \$1 billion to this effort in fiscal year 2016. I believe the United States should accept some of the responsibility for remedying the insecurity and violence that is fueled by U.S. demand for illicit drugs. However, this transformative plan will not work unless the Central American governments commit their own resources to this project, and, more importantly, demonstrate the political will to change the culture of corruption that has undermined economic growth and social justice in Central America for decades.

Mr. Chairman, there are too many governments in the region where political power is seen as a means to benefit your family, your friends, your party, and yourself. Moreover, we cannot pretend that we care about drug corruption and gang violence when we say and do nothing about the fact that the President of El Salvador, for example, has a key advisor who is well known for laundering billions of dollars for the Colombian cocaine smugglers and that his political party, the Frente Farabundo Martí para la Liberación Nacional (FMLN), has made common cause with street gangs to win elections.

We should help, but that starts by using tough diplomacy and robust law enforcement to help the good people of Central America rescue their countries from a culture of corruption and crime.

Also, Mr. Chairman, it is not clear from the President's budget proposal that the Administration has identified a clear set of priorities that are worthy of U.S. assistance in this far-flung proposal, and I am relying on my experience and being one of the principal staffers that helped develop Plan Colombia and then implement it later in the Executive Branch.

Congress should ask the President to empower an official, an individual official in the Executive Branch, to identify priorities, to work with the Congress to craft a legislation, to coordinate the implementation of projects, respond to robust congressional oversight, and engage each of the Central American governments to ensure that it is pulling its weight and executing programs effectively.

Mr. Chairman, Central America's problems will always find their way to our doorstep, literally, as long as a desperate people have



to abandon their homes and wander in the desert to find a future. Thank you.

Chairman JOHNSON. Thank you, Mr. Ambassador.

Our next witness is the Honorable Adolfo Franco. He is the Executive Vice President of the Direct Selling Association. Prior to this, Mr. Franco was Assistant Administrator for Latin America and the Caribbean for the U.S. Agency for International Development (USAID). Mr. Franco also has served in various capacities at the Inter-American Foundation, including General Counsel, Senior Vice President, and President. In 2003, Mr. Franco was appointed as a member of the Board of Directors of the Inter-American Foundation. Mr. Franco.

**TESTIMONY OF THE HONORABLE ADOLFO A. FRANCO,<sup>1</sup>  
FORMER ASSISTANT ADMINISTRATOR FOR LATIN AMERICA  
AND THE CARIBBEAN AT THE U.S. AGENCY FOR INTER-  
NATIONAL DEVELOPMENT**

Mr. FRANCO. Thank you very much, Mr. Chairman, and I want to thank you and Senator Carper for this opportunity to appear before this distinguished Committee.

I do want to commend you, though, Mr. Chairman, for arranging a hearing on a complex and controversial subject that deserves closer examination and calmer deliberation as we just saw a few minutes ago. We cannot hope to reform our immigration laws and stem the tide of illegal immigration unless we do understand the causes, at the outset, what is causing this additional pressure on our borders.

At the outset, as an Hispanic American, let me dispel any notion that Americans of Hispanic heritage or descent have views different from those of the vast majority of non-Hispanic Americans when it comes to illegal immigration. Most Latinos, as other Americans, whether Republican or Democrat, favor orderly, legal immigration to the United States at levels established by Congress, but are vehemently opposed to an executive amnesty for those who have migrated here illegally. As other Americans, Latinos respect the rule of law and understand that a country that loses control of its border loses its sovereignty.

My purpose in testifying is not to flood you today with statistics of what our country has done to promote development and provide humanitarian assistance to Latin America and the Caribbean. I would be happy to provide those details. But, Members of this Committee and your staff are fully aware of the billions of dollars the United States generously provides in the Western Hemisphere annually through a variety of channels.

In addition to USAID, where I served for many years, the other departments and agencies have programs that support democracy, health, justice, environmental reforms, and economic development programs throughout the region. There are also considerable resources dedicated for humanitarian and disaster assistance as well as indirect support that our government provides to the region through development banks and multi-national organizations. Suffice it to say, Mr. Chairman, for many decades, the American tax-

<sup>1</sup> The prepared statement of Mr. Franco appears in the Appendix on page 673.

payer has been extraordinarily generous in helping our neighbors overcome the challenges they have faced.

Unfortunately, after many years—and I was in this business for almost 30 years and, as my colleague, Secretary Noriega—I have learned the simple fact that America cannot solve our neighbors' problems. Nor can we spend our way to development any more than we can spend our way to prosperity at home.

The fact is that the government cannot create wealth and the government cannot develop under-developed societies. Economic growth can only come from a vibrant private sector. The role of government is to create the environment and the security necessary to allow the private sector to create wealth. Without a commitment that can be made only by Latin Americans themselves, continuing to pour billions of U.S. taxpayer dollars into these countries will not change this fact but it will only make it worse by enabling governments to postpone unpopular reforms and create the kind of problems my colleague, Secretary Noriega, referred to—enable oligarchies and others in power to continue to resist those reforms.

In that vein, Mr. Chairman, I can assure you that Vice President Biden's well-intended proposal to provide an additional \$1 billion in development assistance to Central American countries without this prior commitment and demonstrable record for meaningful reforms will do nothing but reinforce bad habits and a dependence on foreign aid. We have yet to see the specifics or the proposal by the Central Americans themselves to provide additional complementary assistance to make any so-called plan work.

Our resources, instead, would be more effectively spent on securing our borders and modernizing our immigration procedures in order to send a clear signal that we will enforce our immigration laws. Such an unambiguous message to smugglers and would-be illegal immigrants is a prerequisite to success and more important than anything else we can do in the short term.

Today's hearing is focused on the pull factors that have led Latin Americans, particularly, of course, Central Americans, to immigrate illegally to the United States. At its core, the principal reason, and I agree with Senator Carper, continues to be economic opportunity, and our country provides it.

It is clear to anyone that has any knowledge of our decades to promote prosperity in the region that foreign assistance, however, has done little to change that in terms of the plight of the poor. This situation is made even worse by endemic corruption, as referenced by my colleague, Secretary Noriega, by drug trafficking, violent gangs, and a general lawlessness that results from ineffective law enforcement that is often linked to the criminal activity itself, meaning that law enforcement is tied to the criminal activity.

Unfortunately, an insecure border only compounds these problems because it gives an opportunity for human smugglers and these gangs which are linked to them in Central America and Mexico to prosper from this illicit business. These smuggling operations are a multi-billion-dollar business. According to a recent GAO report, 56 percent of our border, despite the efforts we have made,

is not under operational control, and, thus, it is territory that is open for continued growth for illegal smuggling operations.

Now, rightly or wrongly, the Obama Administration's recent executive actions on immigration have been widely perceived throughout Central America as an executive amnesty. It has been advertised as such. This will inevitably result in more illegal immigration and strengthen the human smuggling operations carried out by gangs and smuggling rings.

The reality, Mr. Chairman, is that since 2011, the number of illegal immigrants apprehended at the U.S. border has increased by 43 percent, from 340,000 to 487,000. These estimates are important. What these numbers reflect is of those attempting to enter our country illegally, half of them ultimately are successful. The recent increase is largely attributed to children and families, many of whom believe, as Secretary Noriega mentioned, that U.S. immigration laws have changed.

And, as a consequence of the President's statements and executive actions, in simple terms, there is a broad legalization in the United States of illegal aliens, and the simple fact is that the message being heard is if you can just get your children or yourself across the border by any means and stay here long enough, you will enjoy the full benefits of citizenship in the United States. That is the simple pull factor that is existing in Central America at this moment.

Mr. Chairman, in conclusion, I would urge you and this Committee to consider—and these are not easy things—the following actions that Congress could take or send a message to stem the tide of illegal smuggling and immigration.

First, restrict appropriations for the Department of Homeland Security so that no funds can be used to implement executive actions or policy directives that prevent enforcement officers from carrying out their responsibilities under current law and thereby enable large numbers of illegal aliens to avoid deportation and even to receive work permits not authorized by current law.

Second, prevent illegal employment with a universal e-Verify mandate and other measures to boost employer compliance. They have a responsibility, too. And, this will also address identity theft, which is rampant in our country.

And, last, authorize the U.S. Border Patrol to keep illegal border crossers in custody in the immediate border region and ensure expedited removal. This will send a very clear message in Central America.

By taking these actions, Congress would not only simply reinforce the rule of law, but also send a message that the law cannot be set aside by President Obama or, for that matter, any President at his own convenience whenever he decides there are obstacles to his own preferences. By Congress affirming a commitment to the enforcement of the immigration laws of the United States that are currently on the books, smugglers tied to drug cartels would diminish and our neighbors will understand the rule of law is not only paramount, but there, indeed, is no executive amnesty in the United States for those who successfully breach our borders.

Mr. Chairman, I would be happy to answer any questions that you or Members of this distinguished Committee may have for me.

Chairman JOHNSON. Thank you, Mr. Franco.

Our next witness is Eric Olson. He is the Associate Director of the Latin American Program at the Woodrow Wilson International Center for Scholars in Washington, DC. Prior to joining the Wilson Center, he was a Senior Specialist in the Department for Promotion of Good Governance at the Organization of American States, served as Advocacy Director for the Americas at Amnesty International USA, and was a Senior Associate for Mexico in Economic Policy at the Washington Office on Latin America. Mr. Olson.

**TESTIMONY OF ERIC L. OLSON,<sup>1</sup> ASSOCIATE DIRECTOR, LATIN AMERICAN PROGRAM, WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS**

Mr. OLSON. Thank you very much, Mr. Chairman and Ranking Member Carper and Members of the Committee. I appreciate your organizing this hearing and your focus, your interest on the underlying issues, the causes of this crisis. I am delighted to be here today on behalf of the Woodrow Wilson Center, a nonpartisan think tank chartered by Congress as the official memorial to President Woodrow Wilson. Thank you very much.

I have submitted written testimony, so I am going to, in the few minutes I have, focus on three things. First, the current situation. I am just back from several days at the Mexico-Guatemalan border visiting migrant shelters and detention facilities and hearing from migrants and Mexican, Guatemalan, and U.S. officials. As you will recall, when I appeared before this Committee last summer, we were in the midst of the humanitarian crisis and the United States-Mexico border, where 50,000 Central American unaccompanied children were arriving, and a similar number of families.

During my visit to the Guatemala-Mexico border, I observed that migrants are still very much coming to the United States, not at the levels they were in 2004—that was a historically high level—but above the 2013 levels, and the reason is, in my estimation, in large part, because the underlying drivers of the migration, the fundamental issues here that people are facing, are still in existence, have not changed significantly.

Violence and homicides are still at record levels. They have gone down some in Honduras and Guatemala, but are up in El Salvador. Economic despair continues. Family reunification is still a powerful incentive. High rates of corruption and penetration of the State institutions by criminal groups have meant police, justice ministries, and prisons are incapable of providing the law enforcement and justice people need to survive.

Many families and young people are faced with dire choices, a Sophie's choice, if you will, in which they must either reach an accommodation with criminal groups, watch their children join up, watch their children die, or flee. It is not surprising that many decide to flee.

What has changed in the last several months? Efforts by the United States and Central American governments to send the message that the trip is treacherous, that it is dangerous, that they

<sup>1</sup> The prepared statement of Mr. Olson appears in the Appendix on page 677.

run the risk of being trafficked, and that they will not be received with open arms in the United States have had an impact and dissuaded many from coming. Furthermore, the Mexican government has stepped up its efforts, as I observed, to detain and deport Central Americans. Detentions are up 25 percent, and although their deportations are not up that much, they are still significantly up.

And, Mexico has done much to dissuade migrants from using the freight trains, the so-called “bestia,” or beast, by more aggressively patrolling the train lines. The result is that trafficking routes and migrant routes have shifted to more vulnerable areas where there are not protections from shelters. So, we do not know if the violence has actually increased against them on the route or not.

The second point I would like to focus on is that this context requires a comprehensive strategy designed to address the underlying challenges and push factors in Central America. I recognize, as my colleagues have said, that there are pull factors, but those pull factors would exist for Mexicans, as well, and we have not seen the rise in Mexican child migrants the way we have from Central America.

So, I return to the need to focus on the driving factors, the push factors. Fortunately, we have before us a real opportunity with two complementary plans that deserve support, the Alliance for Prosperity from the Central American countries, and President Obama’s plan. What is different is now we have a plan from the Central American governments that did not exist before, and I agree, without a plan and a commitment from them, we should not proceed.

But, these plans are promising because they focus on both the economic and the security challenges facing the region in ways that previous plans—the Central America Regional Security Initiative (CARSI)—did not. It focused exclusively on security. They also focus on building capable law enforcement institutions, especially civilian police, public prosecutors, and prison reform is essential, and they seek to promote the rule of law as the fundamental building block for better security and government capacity.

Furthermore, the risks of doing nothing in Central America are too great. The possibility that thousands of people will continue to die and more children will be forced to flee, the ability of criminal networks to further erode government capacity in Central America to provide basic security and services, are very great. And, the stakes are too high for Central America, Mexico, and the United States to do nothing.

Conversely, and this is my third and final point, we know that simply throwing money after the problem is not an option. Unless the problems of corruption and lack of rule of law are addressed head on, then there is little hope that there will be any change and that these plans will succeed. Investors and the private sector will not invest at needed levels if the rule of law is not strong and there are no assurances of a level playing field. Children and families will continue to face violence and economic uncertainty.

I believe the Central American governments are aware that there will be no blank check from Congress and this Administration and are willing to accept specific conditions to ensure progress, but those conditions are essential, and we need to be clear and we

need to articulate them very specifically. I have listed several in my testimony. If you permit me, I will just highlight a couple of them before I conclude.

In Guatemala, I think Guatemala has to renew the mandate of the International Commission Against Impunity in Guatemala (CICIG). That mandate runs out in September. There will be a new Guatemalan government, and to ensure continuity in building the rule of law, Guatemala needs to commit itself to renewing the CICIG mandate.

Honduras must support reform of the national police and the public prosecutor's office, especially with regard to investigative capacity and community relations. They are not investigating cases, they are not holding people accountable for crime, and people have lost confidence in their police and their prosecutors. Also, greater transparency in the President's Special Security Fund, which only he manages. All countries need to overhaul their prison system, but especially El Salvador, which is the most crowded and where there is more criminal activity coming out of the prisons.

Support for civil society dialogue between government, the private sector, and non-governmental organizations is essential. Corruption can be fought when civil society is active in holding government accountable.

And, finally—I see you are going to call on me here—let me just say—

Chairman JOHNSON. I was just shifting in my chair here.

Mr. OLSON [continuing]. We should look at creating mechanisms like the Millennium Challenge Account or the President's Partnership for Growth that establish specific markers that are constantly and continuously being evaluated for progress. I think we must have those conditions before we go ahead and support these plans.

Thank you very much.

Chairman JOHNSON. Thank you, Mr. Olson, for your testimony, and your perceptive ability, sir. [Laughter.]

Let me start with you.

Mr. OLSON. Yes.

Chairman JOHNSON. I mean, if you take a look at that chart<sup>1</sup>—

Mr. OLSON. Yes.

Chairman JOHNSON [continuing]. There is no doubt about the fact that, obviously, Central America is not as developed as America, conditions here. There are far greater opportunities. There is a huge wage disparity. There has been for quite some time. We do see one action to change, is the Deferred Action on Childhood Arrivals. The conditions were similar in 2009, 2010, 2011. Other than Deferred Action on Childhood Arrivals occurring in 2012, did something else change? I mean, was there some dramatic shift in wage disparity or increased violence? I have actually seen homicide rates decline over that time period in some of those countries.

So, did something else happen that I am not aware of that would lead us to look at a different root cause in terms of the surge? I am just talking about the surge. The conditions, the pull factors, the push factors that existed for quite some time certainly contributed to the 3,000 to 4,000, to 4,000 in 2009, 2010, 2011. Other than

<sup>1</sup> The chart referenced by Senator Johnson appears in the Appendix on page 734.

Deferred Action on Childhood Arrivals, was there some other proximate cause to this surge from Central America?

Mr. OLSON. Yes. Thank you. That is a very important, relevant question, and it is a complicated response. A couple things. One, in 2012, Honduras had the world's highest homicide rate, over 90 per 100,000.

Chairman JOHNSON. What was it in 2009?

Mr. OLSON. Much lower. So, I think homicide rate and violence rates increasing during that period was a factor. I am not saying it is the only factor.

We saw the economies of Central America declining over that period, as well. I think, if I am remembering right—and I do not have the data in front of me—El Salvador's growth rate in 2012 and 2013 was around one percent. So, the economies did decline.

But, I want to make one other point—or two other points on this. I do agree that there is some element that explains that is related to the point about DACA. But, there are two other points that have to be clear. We did not see an equal increase in Mexican children coming to the United States or Nicaraguan children, for that matter, all of which you could say generally are in the same region, where coyotes, where traffickers are very outspoken.

The second thing—

Chairman JOHNSON. Mexican children, you returned the rate of, what, 97 percent, according to—

Mr. OLSON. I am sorry?

Chairman JOHNSON. Mexican children get returned at the rate of 95 percent. I do want some other people to answer some questions.

Mr. OLSON. But, can I just add one other thing—

Chairman JOHNSON. Very quickly.

Mr. OLSON. That chart only goes to 2009. If you go back to 2005, there would be another enormous spike, not at the 2014 level, but at another spike. In other words, this has been an up and down cycle and it is not fair to just—

Chairman JOHNSON. Oh, OK.

Mr. OLSON [continuing]. Pick a set of years—

Chairman JOHNSON. I will look at that.

Mr. OLSON [continuing]. And not the whole thing.

Chairman JOHNSON. I will look at that.

Mr. Franco, do you have any comments on that?

Mr. FRANCO. Oh, I do, Mr. Chairman. I have a lot of respect. I have known Eric for 30 years. I have a lot of respect for you, but anybody who does not look at that chart and draw the conclusion anybody would draw, which is the President's actions have been the chief pull factor that changed—look, we have been around this region, all of us, for 30 years. There was violent civil war in that region in the 1980s. When I was at USAID, San Salvador was the murder capital of the world. We did not have this surge. We did not have the surge in the 1980s of children showing up. This has to do, and is tied, and anybody who is really serious about it understands it to be the case.

The reason, Eric, there is a difference—Mr. Chairman, there is a difference—this is not “Crossfire.” The reason there is no disparity between Mexicans and Central Americans is because the law is different, and that is precisely what we wanted to do—or, I

should not say “we.” I have advocated for a period of time is, let us apply the rules and laws we apply to Mexican children to Central American children and you would have the surge end. It is a simple fact.

Now, that does not mean that there are not problems in the region. That does not mean there is not gang violence. That does not mean that we do not have a role, and we do. And, with all due respect to my colleague, no one is advocating doing nothing. As I testified, we have as a country, and you as a Congress, poured and continue to pour billions of dollars. The question is, is this the way to solve the problem?

The one thing my colleague did not mention was the border, and that is under your control, to enforce the laws of the United States, and that will send a very clear message to smugglers and would-be illegal immigrants. That is just a simple fact.

And, if the President’s, frankly, I think, illegal executive actions are rescinded, that will also send a very clear message in Central America that the laws of the United States are going to be upheld.

Chairman JOHNSON. Let me go to Ambassador Noriega. To what extent has Central America improved their governments, reduced levels of corruption, that we could have some assurance that if we spend more money down there, it is going to be put to good use? Is there any evidence of that?

Mr. NORIEGA. Well, these sorts of things—there are cycles. People come in, for example, the new President of Honduras came into office a year ago with a crusade against corruption. I was there the day of his inauguration. The following day, they were walking a guy from the Ministry of Education—he was on the cover of all the newspapers—in handcuffs for corruption. So, they start this. He started this. In his inaugural address, he said to the criminals, the party is over. Now, the rest of the story is the levels of corruption continue pretty appreciably.

I would note that all of the things that Eric, my dear friend, mentioned in terms of any recommendations he would specifically make, none of them cost any money. And, I note, for example, and Vice President Biden has done terrific work on this, he brought the leaders together in early March and they made a commitment to very specific benchmarks, and this is really important. The Hondurans agreed to police service reform by June 2015. They also agreed to deploy an additional 6,000 police over the next 3 years. El Salvador said they would have a bill criminalizing bulk cash smuggling by June 2015. Guatemala said that they would introduce legislation to transition from an inquisitorial to an accusatorial judicial system by December 2015.

These things do not cost money. And, frankly, I commend the Vice President for leading this effort in dragging these commitments out of these people and getting it on paper and getting the commitment and we will be able to measure against those things. But, again, a lot of the things that have to be done to jump-start economic growth in the country that will then create economic opportunity, revenue to the State, and allow it—have a more effective state to apply the rule of law against all parties without fear of favor, to start that rule of law, a commitment to rooting out corruption, does not cost any money. And, they can take advantage, then,



of the Free Trade Agreement that we extended to them 9 years ago.

Chairman JOHNSON. So I do not lose this line of questioning, you said you were pretty instrumental in being involved in Plan Colombia. Can you talk about, briefly, what were the key aspects? Why did that work? Has it worked as well as what is advertised? I would imagine there are still problems. But, I mean, what would be different in what happened with Colombia versus what may or may not happen in the other Central American countries?

Mr. NORIEGA. Well, a measure of how well it has worked is that everybody takes credit for it. [Laughter.]

Everybody calls it bipartisan. But, in point of fact, a couple of key ingredients. Congressional engagement—this was legislation that was driven, frankly, by House Republicans who—like Ben Gilman from New York—I used to work for him, full disclosure, Dennis Hastert, who went on to become Speaker. These people knew these issues very well. They traveled—

Chairman JOHNSON. But, again, what was different in Colombia?

Mr. NORIEGA. OK. So—

Chairman JOHNSON. Or, what is common in Colombia that we could count on doing something—

Mr. NORIEGA. Let me jump forward. Political will. Few people come along in these countries that have the backbone, the vision, the tireless commitment of Alvaro Uribe in Colombia, who worked 7 days a week, 24/7, really. I saw. I would visit and his ministers looked like they were all going to pass out from exhaustion because he ran them ragged.

He insisted that the State be accountable to the people.

And, frankly, I do not see that level of political leadership from these folks in Central America, and that is what it requires. And, again, that does not cost any money—

Chairman JOHNSON. That was one leader.

Mr. NORIEGA. That was one leader and—

Chairman JOHNSON. People following him.

Mr. NORIEGA. It was essential, and the key point is it is not really there now. We can insist on greater accountability. We can insist on some of the issues that I mentioned about El Salvador being cleaned up by the President. We can use our own law enforcement to bring sanctions against individuals and to send a very clear signal that the United States is changing the way we engage in the region, and that does not really cost a lot of money.

Chairman JOHNSON. OK. Thank you.

Senator Carper, you ready.

Senator CARPER. Again, our thanks to each of you for joining us today, for your testimony and your willingness to stick around and answer some of our questions.

I want to follow up on Plan Colombia. I always like to say, find out what works, do more of that. The key for any organization, country, State, sports team, school, hospital, military unit, the key to success has always been leadership. You have got great leadership, amazing things can happen. If you have lousy leadership, good luck.

He said I was Vince Lombardi. He is from Wisconsin. They have a football team here and Vince used to coach that.

Ambassador Noriega, you have spoken about Plan Colombia, why it was successful. I want to ask the other members, because I like to find out what works, do more of that. So, let me just ask others. Mr. Olson, anything you know about Plan Colombia that you think we might want to take away as a lesson for this time through? Mr. Olson.

Mr. OLSON. Certainly. I think we were very clear and there was an actual plan and metrics along the way that we followed. And, sure, there was a strong leader in Colombia, but, political will is not a static thing. You can build it. You can strengthen it. You can hold people's feet to the fire. And, I think that that was an important factor in Colombia, as well. We conditioned that aid. We did not give blank checks.

We conditioned it on specific procedures and steps that were taken by the Colombian people, the Colombian government, and I think we need to take some lessons from that, as well, in Central America. We need to be clear about what the metrics are, what we expect from people, and hold them to it. I think that is key. And, I think, if all the presidents in Central America do not want to go along that pathway, then we do reserve the right to pull back, because there is no guarantee.

But, again, I think that simply to say, the solutions to all this is on the border, I, frankly, do not think that that is really looking at the underlying causes and the drivers here. And, I would say, that has really got to be the focus and we have to put our energy in that.

Senator CARPER. Good. I would say it is some of both. I think it is some of both, and I am sure you agree with that.

Down in Honduras last fall, I met with their President, President Hernandez, and he talked with our Ambassador Nealon and me about the willingness of our country to extradite folks, bad guys, drug kingpins. And, they were not just interested in seeing these guys extradited and sent to this country for a couple of months or a couple of years. They wanted us to put them away for a long time. And, by doing that, frankly, you provide some breathing room for—insurance of personal safety for the leaders of these countries, their families, and their top aides.

And, since that time, I think there have been eight drug kingpins that have been extradited, and I think we have a couple guys, bad guys, who turned themselves in because they felt the heat. I think there is another one that we are working on. So, that is the kind of thing that we can do to kind of bolster the leadership and give them the sense that they are not all in this by themselves.

Mr. Franco, just a little bit, please, if you would, on Plan Colombia. Why do you think it worked? Are there any lessons that we could take away? Use your microphone, please.

Mr. FRANCO. Happily. As my colleague, I worked on that when I was serving as Counsel on the House International Relations Committee and then as Assistant Administrator at AID. I actually had the good fortune to meet with President Uribe the day before he was inaugurated and was there for his inauguration.

To draw the contrast for a moment, when we met with the administrator at the time, Andrew Natsios, the three of us in a hotel room, he said something and I want to underscore what Secretary

Noriega said, and this is this notion that we are putting something together. We were actually helping the Colombians put forward what they had envisioned.

Plan Colombia in many ways is Colombia's plan that we assisted. This is the difference here, and it is an important one, Senator Carper. This is not us designing something in Washington, and I know there is some consultation, but that we are going to hang a billion-dollar here program, and, of course, they will take it. The Colombians wanted this. The Colombians were committed to doing it and they wanted our assistance along the way.

I do think having an enlightened, committed leader with integrity is important, and that is Alvaro Uribe, was an enormous vision. By way of the differences that he made, the day he was sworn in and we were at the palace, the Palacio Narino, there were—when we were in the palace, there were rockets fired at it. That was the insecurity that existed in Bogota at the time.

Senator CARPER. Those were not rockets in celebration of his inauguration, were they?

Mr. FRANCO. No. We thought they were initially, but they were not. They were different types of rockets that were coming.

So, what worked is that commitment to it, and there was a lot of congressional oversight. Sometimes, the Colombians thought it was overkill, frankly, by, particularly, members of the Senate at the time. But, at the end, I think they recognized that it created legitimacy. So, it was an engagement on our part on a plan they were committed to. It was their plan.

Senator CARPER. Good. OK.

Mr. FRANCO. What I have yet to see is where it is a Central American plan coming from them themselves.

Senator CARPER. Yes. A couple of critical elements, one, leadership, two, a plan, and a plan where there is buy-in, not just our buy-in, but, frankly, the buy-in from the three countries. One of the things that I find encouraging is that all three countries have agreed and signed onto this Alliance for Prosperity. I do not know that we—I do not believe we wrote it, and I do not think any one of those three countries wrote it. But, I think they worked on it together. They collaborated. And, basically, we—I sure hope we played a role. I hope the Inter-American Development Bank (IDB) played a role. I hope Mexico, I hope Colombia played a role, because we all need to be involved.

So, let me come on to Mr. Noriega, and then Mr. Kandel, same question, and the issue is Plan Colombia. What can we learn from it? Maybe what can we not learn from it? Just briefly.

Mr. NORIEGA. I will just add just one additional thing—

Senator CARPER. Yes.

Mr. NORIEGA [continuing]. Because you have all identified this quite explicitly. The Colombians had a security tax and they literally raised taxes—

Senator CARPER. That is a good point.

Mr. NORIEGA [continuing]. And they had a revenue stream committed to national defense.

Senator CARPER. Yes. My recollection is what happened in Colombia is the folks who—what is the word for the folks that have more money? What do they call them? No, no, no. What is the word

for the folks that needed to step and do their share, the wealthier people? Elites? Elites. Yes, the elites. Thank you. [Laughter.]

The elites, and I think that is what happened in Colombia, basically. The Colombian elites basically said, if you want us to fight crime and provide a better environment here, you have to be a part of the revenue package, and they—I do not know if they agreed to it, but they became—and, part of what, when you really look at Honduras, Guatemala, and El Salvador, the elites do not do all that much in terms of revenue. They do not do a very good job of collecting revenues in that country.

As our Chairman knows, we have something that GAO comes up with about every 2 years called High-Risk List, and tax gap is always on that, because we are not collecting all the taxes that are owed. But, they have it big time. They have it on steroids, tax gap on steroids. So, that is a big one.

And, we can look at Colombia. You are right. How did the elites help out, and they did.

Mr. NORIEGA. If I could just add——

Senator CARPER. Please.

Mr. NORIEGA [continuing]. I met with the foreign ministers from Central America last week when they were here, and I——

Senator CARPER. So did we. How did it go?

Mr. NORIEGA. Well, the food was pretty good—— [Laughter.]

No. But, I said quite explicitly to them, you need to have an answer to the question, how much are you putting forward. And, they talked—and, quite frankly, I do not think they have given it a lot of thought, and so—and, they think of this billion dollars as \$333 million for these folks, 333—they are thinking of it as a slush fund, and they will do some cool things with it along the lines of this plan——

Senator CARPER. Yes. As I understand——

Mr. NORIEGA [continuing]. But where is their revenue? They have to put up their revenue.

Senator CARPER. Mr. Noriega, as I understand it, there is around \$500 million that actually is divided among the three countries. About 20 percent would go to, I think, to El Salvador, I think 25 percent to Honduras, and maybe 30 percent to Guatemala. The whole billion does not go to those three countries, and I hope there are some strings attached to it.

Mr. Kandel, I am over my time, just, please, quickly, what can we learn from Plan Colombia or not learn?

Mr. KANDEL. I am afraid that is outside my area of expertise, but I am happy to——

Senator CARPER. Do you want to make something up? [Laughter.]

Mr. KANDEL. I would be happy to consult with my colleagues to see if they have——

Senator CARPER. OK. That is fair enough. We will let you do that.

OK. Thanks. I am out of time——

Chairman JOHNSON. I will give him something——

Senator CARPER [continuing]. But not out of questions.

Chairman JOHNSON [continuing]. That is in his area of expertise. I am viewing you as the numbers man here. We have not really

talked about some of the factors in our immigration law that might be related to the pull factor, incentivize some of this. There was an amendment to the William Wilberforce Trafficking Victims Protection Reauthorization Act that did grant a greater adjudication process, a lengthier process, for immigrant children other than Mexico and Canada. You were talking about we returned 95 percent of Mexican children. Again, that is kind of a real deterrent from sending somebody here if you get sent back right away.

Can you speak to the statistics, because you had them in your testimony, in terms of the difference between return rates for Mexican children, not a whole lot of Canadians coming in here, but that versus Central America, and what that amendment may or may not have done in terms of the pull factor?

Mr. KANDEL. Well, I do not have statistics on the return rates for Central American children. They are very difficult to calculate. But, we do know that—

Chairman JOHNSON. You do statistics on how many we have returned from the last surge, which was primarily—a large chunk of that really was from Central America, so—

Mr. KANDEL. That is right, but the returns do not correspond to the apprehensions, so it is very difficult to sort of come up with a rate for—

Chairman JOHNSON. OK. Do not worry about it. So, just give us the numbers, then.

Mr. KANDEL. What numbers are you requesting?

Chairman JOHNSON. Well, again, just tell us again how many people have been given Notice to Appear, how many people have appeared, how many people were returned of that latest surge. It is not a high percentage. I mean, it is—we had tens of thousands come and we have returned 1,400, I think, in your testimony.

Mr. KANDEL. That is right.

Chairman JOHNSON. Does anybody want to speak to the incentive factor of that lengthened adjudication process? Ambassador.

Mr. NORIEGA. After day one, they did not look back over their shoulder saying, “Gosh, I have got to report for that hearing.” They are home free. And, their expectation is that by the time they need to appear, there is going to be an amnesty or a legalization.

During that crisis, I realized that very few people in this town really understood immigration law. It is just so many patchworks over patches. What they are looking at is the practical impact, and the fact was that word got back to Central America that once you are in the country, they hand you a little permiso and you are home clean and I collect my money and I am—

Chairman JOHNSON. And, in your testimony, you talked about the advertising they were doing. It was very effective. Now, we have had a counter-advertising program for that. Is that effective? Has that been somewhat effective, at least?

Mr. FRANCO. Frankly, I do not think so, because so long as we have an executive decree, or an executive action that is taken by the President, people will twist those around, so long as that is the message. Misinterpreted, misrepresented, granted. But, just as—the fact of the matter is that unless you are returned quickly at the border, you will overstay. So long as the President’s words can be twisted—remember, the profile of the person that makes this

trek and the social, economic, and educational background of the people involved, these are not Ph.D. people or lawyers that are doing this. So, so long as that remains the message, we will continue to see these additional pressures for illegal immigration—

Chairman JOHNSON. The message also is when they see a friend go and not come back—

Mr. FRANCO. Oh, absolutely—

Chairman JOHNSON [continuing]. They figure they got—

Mr. FRANCO. Absolutely. And, I take a little bit of exception with this idea of the bestia. I noticed there was coverage by Spanish television today. I watch the Spanish news programs every night and I see the train and I see it completely going. I really think that I am sure the Mexican authorities would like to do, and cooperate with us, but they are quite limited since large amounts of Mexico are under gang control and gang protection.

So long as this remains big business—and we did not really get into it, it is a \$6 billion business, smuggling involved, just like drug trafficking—and, so long as the executive action is perceived as even gravy or an additional incentive, our problems will continue to mount.

Chairman JOHNSON. There has been a decline in the number of children coming here this year. Do you contribute that to greater enforcement on the Mexican, the Southern border, or the border between Mexico and Central America?

Mr. OLSON. I mean, I was just there, and I defer, or differ from my colleague here. It is very clear that the Mexicans have taken efforts to remove people off the trains. Now, that does not mean they are still not coming in other routes, but the trains are much less a problem than they were in the past, where people were falling off, being extorted, were even killed.

Now, it is true—

Chairman JOHNSON. So, let me just say here—

Mr. OLSON. But—

Chairman JOHNSON [continuing]. So that is border security on the Mexican—

Mr. OLSON. Right.

Chairman JOHNSON. So, border security worked from that standpoint.

Mr. OLSON. Well, as I said in my testimony, Mexico is doing more to detain and deport Central Americans. So, without a doubt, that has had an impact on the number of people coming to the United States. I was in their detention facility on the South. It was at maximum capacity the day we were there. And, they are deporting people regularly, every day.

Now, as, I think it was you, just suggested, there are a lot of children that are being trafficked, and this is a serious issue. Not all of them, but some of them are being trafficked into sex trade, forced labor, and other things. And, I do want to say that they should have an opportunity to request protection of the Mexican authorities, of the U.S. authorities, rather than be simply turned around to a situation where they are under the control of crime.

Chairman JOHNSON. I think we—

Mr. OLSON [continuing]. I think that is an issue, too.

Chairman JOHNSON. I think we do agree with that. There actually was a program—I am trying to get something. I am an accountant, so I like numbers. At yesterday's hearing, we talked about the drug trade being about \$150 billion worth in the Americas. Mr. Franco, you just talked about the human trafficking being about \$6 billion. I asked that question yesterday. Nobody had a figure. I would like to know where you got that.

Mr. FRANCO. Sure.

Chairman JOHNSON. Two-part question. We also did create a program, Central American Miners Refugee Parole Program. There has only been, like, 107 cases. It has just been a very small number of people. Is it just people do not know about it? I mean, from my standpoint, that is part of it. We do need to have a refugee asylum program, but we should really institute that in Central America, not on our shores. Mr. Franco.

Mr. FRANCO. Yes, absolutely, Central America. I will differ now with my colleague, as well. Obviously, when there is any issue, whether it is this issue of human trafficking, or political asylum cases, or so forth, we need to have procedures to address those cases. Usually, in-country is where those things are best handled. There is no question these things exist.

What I do believe is that chart says it all, though, from my perspective. I do not think it is fair for Congress to draw the conclusion—or accurate, I should say—for Congress to draw the conclusion that this uptick has to do with human or sex trafficking from Central America. I just do not believe that to be the case. They are trying to bootstrap others that are really favoring the recent decisions that, I think, have attracted—the President's recent actions that have caused this uptick—they are trying to bootstrap, or create a humanitarian or sex trafficking crisis, manufactured or fabricated or exaggerated or amplified for the purpose of justifying what we all know to be the case.

There is a sense that the law in the United States has changed and, therefore, it is easier to come to the United States and ultimately get a work permit and Social Security number. Now, that is not what the President said. I understand that. But, that is what is being advertised and that is the driver and that is the pull factor, not the other isolated cases.

Chairman JOHNSON. I am over time, but Ambassador—

Mr. NORIEGA. Very briefly. I know that we will all agree on this, which is where those human rights violations, political asylum, and legitimate claims exist, they have to be adjudicated. We do have this program that was initiated to allow for family members here, who are lawfully here, to petition for their minor children, and several hundred, and, I guess, by February, 95 percent of the Salvadorans had applied for that.

But, the solution to this problem is not to fix—make things better for people several thousand at a time from Central America when there are millions in the region who are suffering under conditions that the government can fix if it takes these issues seriously.

They do need some support from us. We can offer that, in effective programs where they are accountable and all that. And, we do have an obligation to do that. But, that is where the problem has

to be done, and the governments have a long way to go before they have vindicated their responsibilities.

Chairman JOHNSON. Thank you. Senator Carper.

Senator CARPER. Thanks, Mr. Chairman.

I want to dwell for a moment on what works and just throw out an idea that might be helpful for us. Senator Booker was telling me yesterday, Mr. Chairman, that he had done some checking and about 40 percent of the people that are here illegally out of the 11 or 12 million that are here came here—they came here legally. They came here on visas, then they were here on a visa overstay and they just never went back.

The folks at Johnson and Johnson came up with a clever idea, and the idea is called text4baby, text4baby, and the way it works is this. For a mom, and maybe a dad, with a young child, newborn, and they have appointments that they are supposed to make for check-ups, supposed to get immunizations, all kinds of scheduled things to do in order to take care of their baby, everybody almost in this country has a cell phone and what we do now, and Johnson and Johnson started this program, is a text4baby, like, “One week from today, your baby is due for X.” “Three days from today, your baby is due for X.” “Tomorrow, your baby is due for X.” And, it actually works. We have done it in Delaware to great effect.

So, we came up with the idea and said, well, why do we not maybe do something like not text4baby, but text4visaoverstay, like, “Your visa expires in 2 weeks.” A week later, “Your visa expires in one week.” Just the idea that somebody is looking, somebody is noticing, somebody is watching. And, it works for text4baby. We think it might work for, potentially, visa overstays, and even if it cuts them by a third, that is certainly progress.

One of the things I have loved about my time in public life is job creation and job preservation. I have gotten to be Treasurer, Congressman, Governor, Senator from my State. Before that, I was in the Navy for a long time. But, I have always loved job creation and job preservation. I never created a single job in those roles. But, what I did do was help create a nurturing environment for job creation. That is what I did.

In Delaware, the 8 years I was Governor, I was fortunate to be Governor during the same years Bill Clinton was President, a robust economy. Even I looked like I knew what I was doing most days because of the economy being so strong. We had 8 years of balanced budgets, 7 years of reduced taxes. We cut down some of our debt, got AAA credit ratings for the first time in State history. So, it was a pretty good run and created, I am told, more jobs in 8 years than in any 8-year period in the history of our State. I did not create one of those jobs, but we certainly worked hard to create the nurturing environment.

What does that include? Workforce. What does that include? Sound budget policies, actually, investing in the right kind of stuff. What does it include? It includes transportation investments and infrastructure investments, common sense regulation, access to capital, energy costs, affordable health care, all that stuff.

And, I think if these three countries are going to be successful, they are going to have to create a nurturing environment for job creation and job preservation, and that is a role for government.



They have very weak government systems, as you know, and we can help bolster them and show them how to make them better, maybe more effective.

One of the big problems they have in these three countries, as you know, cost of energy. Their electricity is generated largely by petroleum in most of these places. They have access, as it turns out, to very low cost natural gas from Mexico, and the idea is to bring it down, pipeline, bring it down and use that to create electricity for maybe half the cost. That is a nice element to incentivize job creation.

We have not really talked about the Inter-American Development Bank, and I want those of you who know something about that to share with us what role the Inter-American Development Bank might play as one of our partners in this. Again, I say, this is not all on us, the United States, and these countries are not good enough or strong enough to do it all themselves. But, if they get some help, including from the Inter-American Development Bank, they might be able to just pull this off.

Can somebody who knows about the IDB just talk about it, please. Ambassador Noriega.

Mr. NORIEGA. I am sure Adolfo knows more than I do, but I—  
Senator CARPER. Is that true?

Mr. FRANCO. I do not know more than he does—

Mr. NORIEGA. About this, at least, but I pushed the button first, so— [Laughter.]

I know this very discretely about the IDB, is they wrote that plan. They wrote this plan for Central America. Their hands are all over it, and I have talked—

Senator CARPER. Well, that is actually kind of encouraging.

Mr. NORIEGA. It is very encouraging because it is an under-used, under-utilized resource, extraordinarily bright people there. And, so they put this plan—now, this is what makes my heart break, is that 9 years ago, we ratified CAFTA. This plan should have been adopted after CAFTA, because what this is all about is spreading economic opportunity to people from all walks of life through the rule of law, through logistical improvements, to breaking down barriers within the region. They are talking now about a customs unit within Central America.

But, the IDB can play an important role in some intelligent lending. It comes along with the most important value added being technical assistance, and they sort of accompany the execution of these projects. I would hope that the IDB would stay front and center as they execute this plan in Central America.

Senator CARPER. Good. Do you see a role for—and then we will come to Mr. Franco—do you see a role, eventually, for the Inter-American Development Bank with respect to this pipeline coming in from Mexico, or is that something that there is just plenty of reason in terms of private sector—

Mr. NORIEGA. Right.

Senator CARPER [continuing]. They have this extra natural gas, or do they not need the IDB?

Mr. NORIEGA. Right. My guess is they have—the market will work there, and, I think, let the market work. The IDB could very easily, and maybe they are involved in financing the project. But,

in point of fact, you can also talk about an isthmian energy market, so you are backing energy as it is required up and down from Colombia and into Mexico, backing it up and down Central America as the demand requires. It helps build a bigger market, lowers prices. But, again, I think that the IDB could conceivably play a role, technical assistance and maybe financing.

Senator CARPER. Good. Thanks. That is one outfit, we probably need to spend some time with them. I need to know more what their capabilities are. I have always heard they have really smart people, and that is good. Yes.

Mr. Franco, please.

Mr. FRANCO. Well, I worked very closely with the Inter-American Development Bank over many years, and the current President used to be the Ambassador to the United States from Colombia and he worked very closely with us on Plan Colombia.

Senator CARPER. What is his name?

Mr. FRANCO. Luis Moreno. And, so, I have a lot of respect for it.

I see it a little bit differently than Secretary Noriega. Yes, I think there is IDB all over it, and that is partly a good thing and, then, partly a bad thing, from my perspective. I reiterate what I said about the fact that there has to be the buy-in and the design and their plan, meaning from Central Americans. I do not think we really disagree on that.

But, when they are involved, there is a seriousness and benchmarks and conditions and so forth, although IDB loans can be forgiven, and there can be bad loans and the rest of it. So, those investments should not be lulled into the false sense of security that it is a commercial bank doing this, which would, of course, in terms of these activities. But, their involvement is good and the focus will be one on things that are actually quite achievable.

But, I reiterate what I said that there is a stark difference between that and what we had seen in the case of Colombia, and that is the involvement in the development and the commitment by the Central Americans themselves to the actual plan. And, I do agree with an earlier comment that was an important one that Secretary Noriega made, is that he has already met with the foreign ministers and they are already seeing this, I want to say, as a slush fund or so forth, where the money is being divvied up, and it is, "Where do we sign," so to speak, and that is my concern, Senator.

Senator CARPER. Thanks.

Mr. Olson, I am out of time, but just a quick comment on this, please.

Mr. OLSON. Yes. I believe that the IDB is deeply involved. One of the projects they are involved in is what is known as the Pacific Corridor that is supposed to expedite commercial traffic from Guatemala to Panama City. Right now, private enterprise says that the average speed of a truck is 15 kilometers an hour between that corridor because of all the problems along the way, bad infrastructure, but also inefficiencies at the border where people have to wait for days to get across.

So, these are areas in which the IDB is trying to modernize, help facilitate trade, and encourage the Central Americans to take the steps they need to have a more modern economy. And, as you pointed out, without a good economy and growth and jobs, poverty

grows and it impacts the violence and ingovernability of those countries.

So, I think the role of the IDB is really important, and they are involved in other things, as well, but I give that as one example.

Senator CARPER. Thank you all.

Chairman JOHNSON. Thank you, Senator Carper.

One of the good ideas I stole from our Ranking Member here was giving the witnesses a chance to make that final point. We do have another panel, so I would ask you to keep it short. I will use this if you get too long.

But, Mr. Kandel, if you could start.

Mr. KANDEL. Well, getting back to your question, the TVPRA does treat Mexican children differently than children from Central America. So, if you look at the process, the rates are very high for Mexico in terms of return. For Central American kids, they get promptly screened, promptly referred or transferred to ORR custody, and promptly reunited with their families. The average time that they spend is 35 days at ORR custody. So, it is once they have to wait for an immigration hearing, that is when the time extends, and that largely explains the amount of delay that it takes for them to finally get removed.

Chairman JOHNSON. Thank you.

Senator CARPER. Just for clarification, under the, I want to say, 2007 law signed by President Bush, does it differentiate the way we treat kids from these Central American countries as opposed to kids from Mexico in terms of what we do with them and the turnaround times? It does, does it not?

Mr. KANDEL. Yes.

Senator CARPER. Thanks.

Chairman JOHNSON. That was the point. Ambassador Noriega.

Mr. NORIEGA. My colleague, Eric Olson, referred to the Millennium Challenge Corporation (MCC), and it is a very good model—it was initiated under President Bush and we were both part of it, as the administration—because it holds governments accountable to achieving certain requirements in order for them to participate. They made in September a disbursement of \$287 million to El Salvador and everybody that I know of that knows anything of El Salvador is scratching their heads as how in the world did they rationalize that decision.

So, MCC, a very important program because of the model, where you have to meet certain benchmarks and requirements. I mean, we have lost that, and El Salvador just—

Senator CARPER. What do you mean, we have lost that? I do not—

Mr. NORIEGA. They do not have a rigorous application of those requirements. That was a political decision, that we wanted to make nice with the new government in San Salvador, and so we gave them \$270 million. March 1, they held an election for Congress. It went more than 2 weeks before they could even give the first results. So, you are supposed to have the rule of law and democracy. They cannot even hold an election, and the suspicion everybody has is that the government was figuring out how many people they wanted in Congress.

So, I mentioned before the senior folks involved in money laundering, billions of dollars for the Fuerzas Armadas Revolucionarias de Colombia (FARC), the FMLN making “get out the vote” packs with the Mara Salvatrucha gang. I mean, there is something seriously wrong there, and I think if you want to start somewhere, look at what is going on in El Salvador and that is where we ought to see if we can have some real accountability.

Chairman JOHNSON. In other words, your point, MCC lowered its standard.

Mr. NORIEGA. Absolutely.

Chairman JOHNSON. Mr. Franco.

Mr. FRANCO. I was not really going to talk about, Mr. Chairman, about MCC, but since we were both involved in setting it up, I had to tell you, I completely concur and was disappointed. When we were in the Bush Administration, of course, the President, President Bush, was very centrally involved. It was really his idea to do this. And, there were a lot of push factors at the State Department and AID to say, well, you have got to help this country along, whatever—and, I am telling you, the criteria was so rigid. We have had one of the winners, it is the country in the Pacific with Hurricane Vanducho, that we said, what are we doing giving assistance to this? It met the criteria.

Well, our instincts were to go to the hot spot, so to speak, but those were rigidly applied, and I think that is an example of something that they could all learn from, and I would hope that that seriousness would return to the program.

Just quickly on the issues today, not to reiterate what I have said, but I think it is an important point, Senator Carper, particularly when you look at that, is—and there was a big debate here in the Congress and the public arena of why all these children were showing up and Mexican children were not showing up. The law is different.

In a simple layman’s term here, and I hope this is being watched in Delaware and in Wisconsin, Mexican children are returned and Central American children are not. There is gang violence in Mexico. There are a lot of problems in Mexico. You had normalistas slaughtered in Mexico. A lot of people have traditionally immigrated illegally from Mexico. But, children were not coming, and the law was changed in 2007. If the same law were applied to Central American children, I do not believe you would have 110,000 children show up in July or in an uptick immediately.

Second, Senator Carper, I completely agree. The overstay issue is not—we do not focus enough on the overstay issue, because the border is symbolic. You can see it. You can actually see people. But, overstay—and it is not limited to Central America. The Brazilian overstay is quite high, the rates, and other countries are very high. The overstay issue is why we need to have the resources for the Immigration Service to modernize and to do the things you were talking about with the baby cell phone ideas, to modernize, to monitor, because what, frankly, has happened is they just do not know, and people just coming to the country, and we just do not know where they are.

So, I think those types of resources and that type of enforcement. Again, it might not be the sexy thing to do or the type of thing

when you see pictures of people coming over and so forth, but they are the things within the control of our government, and that is where the resources should be applied.

Chairman JOHNSON. Thank you, Mr. Franco. Mr. Olson.

Mr. OLSON. I think the take-away here should be that this is a very complicated issue that is driven by both pull and push factors. I think it is clear that the United States broken immigration system is an issue that needs to be dealt with. But, my message to you, more than anything else, is to not lose sight of the importance of U.S. involvement in Central America to deal with these underlying issues. People are dying. For us to walk away from this carries with it a great deal of risk for both the United States, Central America, and Mexico, and I think we can work with the plans we have before us if we are careful to condition them, require people to comply, and stay focused. I think, for my estimation, that is the root of the problem and the root of the issue we need to focus on. Thank you.

Chairman JOHNSON. Again, thank you all for your thoughtful testimony and your thoughtful answers to our questions, and if we can call up the next panel.

Senator CARPER. Thanks much.

[Pause.]

Chairman JOHNSON. Welcome, everybody. Is everybody all settled, all comfortable?

Our first witness will be Secretary Alan D. Bersin. Mr. Bersin serves as the Assistant Secretary and Chief Diplomatic Officer for the U.S. Department of Homeland Security, Office of Policy. Mr. Bersin also serves as Vice President of INTERPOL for the Advance Region and is a member of the INTERPOL Executive Committee. From 2010 to 2011, Mr. Bersin served as Commissioner of U.S. Customs and Border Protection. In 2009, he served as Assistant Secretary and Special Representative for Border Affairs at DHS. He has also served as Chairman of the San Diego County Regional Airport Authority and as California's Secretary of Education. Secretary Bersin.

**TESTIMONY OF THE HONORABLE ALAN D. BERSIN,<sup>1</sup> ACTING ASSISTANT SECRETARY AND CHIEF DIPLOMATIC OFFICER, OFFICE OF POLICY, U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. BERSIN. Good afternoon, Mr. Chairman. Thank you for the invitation to address the issues regarding Central America, the factors of push and pull that bring us to this moment. Secretary Johnson appreciates this Committee's interest in this important issue and I look forward to responding to your questions and to answering, as well, the questions of the Ranking Member. Good afternoon, Senator Carper.

We have reached a turning point in Central America. The internal leadership in the region has shown a willingness and commitment to partner with the United States. Does this mean that they are where they need to be or their countries are where they need to be in terms of turning around the cycles that have led to the

<sup>1</sup> The prepared statement of Secretary Bersin appears in the Appendix on page 683.

push out of their countries? No. But, we can assure you, I think, Mr. Chairman, Ranking Member, that if we take no action at all, that we should expect the situation to continue along the same vein that it has been moving.

The wave of unaccompanied children crossing from Central America, crossing the U.S.-Mexico border this summer, presented not only a security crisis, as you know, but a humanitarian one. But, it did get us to focus on Central America. It did lead this Nation to ask, what is to be done and what needs to be done in Central America and elsewhere to deal with the issue. I look forward to engaging in a dialogue with you with respect to that matter.

The root causes for migration from Central America to the United States are not in dispute in terms of the push factors. I look forward to engaging with the Chairman and the Ranking Member with regard to those factors, but also with regard to the so-called pull factors into the United States.

In the absence of comprehensive immigration reform, we are dealing with a broken immigration system that has a whole variety of consequences and will continue to have them as long as we do not attend to this national challenge.

Central America's economic growth has lagged well behind that of the rest of Latin America, with economic productivity growing slowly or remaining flat over the last decade and under-employment hovering between 30 to 40 percent in the Northern Triangle countries. Thirty to 40 percent unemployment—we should not look very much beyond that, together with the violence that is attendant to the societies down there and the fact that there is a family unification issue that none of us in our own individual circumstances would deny. And, as I said, if we do not take action, Mr. Chairman and Ranking Member, we should not expect a different result.

Demographic trends exacerbate every challenge we face. Sixty-three percent of the 43 million citizens of Central America are under the age of 30, with the highest growth rates in Honduras and Guatemala, where jobs are not being created fast enough to absorb the burgeoning labor pool.

To address these issues, our best guide is to look back a generation to where Mexico was. In the previous panel, I understand the Chairman and the Ranking Member focused on Colombia, and I will be pleased to respond to your questions in that respect. But, I think the closer analogy in terms of the scale of the problem we face, in terms of the causes of the problem we face, I think Mexico is a better model for the actions that we might contemplate taking with regard to Central America.

Over the last 5 years, the United States and Mexico have revolutionized their security and trade relationship, achieving unprecedented levels of cooperation. Mexico, over the last generation, has become the second largest economy in Latin America and the 13th largest economy in the world. The OECD in Paris predicts that within one generation, by 2042, Mexico will have a larger economy than Germany. Trade between our country and Mexico now amounts to \$1.3 billion daily and more than \$460 billion yearly.

Let me pause there, Mr. Chairman and Ranking Member, and I look forward to responding to your questions. Thank you very much.

Chairman JOHNSON. We appreciate that.

Our next witness is Francisco Palmieri. He is the Deputy Assistant Secretary for the Caribbean and Central America in the Bureau of Western Hemisphere Affairs. Prior to this assignment, he served as Deputy Executive Secretary in the Executive Secretariat and as the Director of the Bureau of Western Hemisphere Affairs Office of Policy, Planning, and Coordination. He has served in the Dominican Republic, El Salvador, Honduras, and as a Senior Desk Officer for Venezuela. Secretary Palmieri.

**TESTIMONY OF FRANCISCO PALMIERI,<sup>1</sup> DEPUTY ASSISTANT SECRETARY FOR CENTRAL AMERICA AND THE CARIBBEAN, BUREAU OF WESTERN HEMISPHERE AFFAIRS, U.S. DEPARTMENT OF STATE**

Mr. PALMIERI. Thank you, Mr. Chairman, Ranking Member Carper, other Members of the Committee. This is an excellent opportunity to testify on the U.S. strategy for engagement in Central America.

Last summer's increase in migration of unaccompanied children provided a strong reminder that the security and prosperity of Central America are inextricably linked with our own. We also saw how a combination of U.S. leadership and rising political will in the region can successfully tackle shared challenges. It remains imperative that the United States support the leaders of El Salvador, Guatemala, and Honduras to address the region's security challenges. The stakes are high, and our joint efforts demand more than business as usual.

Last summer, in partnership with Mexico and the Central American governments, we achieved several important successes. The United States' public messaging campaigns about the dangers of the journeys for the children and families, assisted by host countries' efforts, effectively countered false rumors spread by alien smugglers about non-existent immigration benefits in the United States.

The Mexican government has taken significant steps to dismantle human smuggling and trafficking organizations and to effectively shut down the use of the la bestia train route. In 2014, Mexico apprehended 127,332 migrants, including 10,923 unaccompanied children.

Senator CARPER. What time frame?

Mr. PALMIERI. In 2014. Over the past 2 years, the U.S. Government took a hard look at our own approach in Central America. Although security is paramount and will remain so, we realized we needed to broaden our vision for how we achieve it. We developed an inter-agency strategy that balanced three inter-related and interdependent objectives. These objectives are prosperity, governance, and security.

Without significant progress on all of these fronts, Central America will continue to face extreme violence and widespread poverty.

<sup>1</sup> The prepared statement of Secretary Palmieri appears in the Appendix on page 689.

These conditions will compel tens of thousands of Central Americans to flee their homes each year. Conversely, a secure, democratic, and prosperous Central America can provide an environment in which its citizens can thrive at home instead of migrating elsewhere for safety and opportunity.

The President requested \$1 billion for fiscal year 2016 to support the U.S. strategy for engagement in Central America. Our request maintains and expands our current focus on security, including the investments we have made through the Central America Regional Security Initiative, and will support new investments for prosperity and governance consistent with the strategy.

As Vice President Biden recently said, the cost of investing in Central America, where young people can thrive in their own communities, pales in comparison to the costs of another generation lost to violence, poverty, desperation, and immigration. Six million young people will seek to enter the labor force in the next decade. Without job opportunities, these youth may end up participating in the illicit economy or coming to the United States.

Security is at the heart of our agenda, but it cannot be achieved without strengthening our efforts in the areas of governance and economic prosperity. Economic growth and good governance are security issues.

As I said previously, we believe the essential condition for success is present, political will in the region. The Presidents of El Salvador, Guatemala, and Honduras have a plan. They are already making progress, and they have publicly committed themselves to near-term time lines for continued action.

Northern Triangle leaders are implementing their own Alliance for Prosperity Plan. We want to work with the U.S. Congress to help Central America and strengthen U.S. national security. The U.S. strategy aligns with and supports the goals and objectives of the Alliance for Prosperity. If we join Central American governments who move forward in this way, we will help set Central America on a new trajectory. I believe doing so will help secure America.

I look forward to your questions.

Chairman JOHNSON. Thank you, Secretary.

Our next witness is Lieutenant General Kenneth Tovo. General Tovo serves as the Military Deputy Commander of the U.S. Southern Command in Miami, Florida. Southern Command conducts military operations and promotes security cooperation throughout the 16 million square mile area of Latin America and the Caribbean. Lieutenant General Ken Tovo was commissioned from the U.S. Military Academy into the infantry in 1983. After serving his initial tour in the 82d Airborne Division, he transferred to Special Forces. General Tovo.



**TESTIMONY OF LIEUTENANT GENERAL KENNETH E. TOVO,<sup>1</sup>  
 USA, MILITARY DEPUTY COMMANDER, U.S. SOUTHERN COM-  
 MAND, U.S. DEPARTMENT OF DEFENSE**

General TOVO. Chairman Johnson, Ranking Member Carper, distinguished Members of the Committee, thank you for the opportunity to speak here today. General Kelly regrets that he cannot be here with you. He is currently meeting with political leaders and defense officials in Central America to discuss many of the same issues that we will discuss today.

I would like to echo my colleagues from DHS and State Department. A secure, prosperous, and well governed Central America is in our national security interests. The United States and Central America are bound by more than geographic proximity. We are bound by shared culture, values, and religions. We are bound by more than \$30 billion in trade between our nations. And, we are bound by shared security concerns, like transnational organized crime and illicit trafficking.

In the United States, we feel the direct impact of drug trafficking in our workplaces, in our neighborhoods, and in our families. As a result of our demand for those drugs, we contribute to many of Central America's challenges, including weak governance, corruption, and criminal violence.

Last year, as we have discussed, challenges like violence and poverty drove almost half-a-million migrants from Central America and Mexico, including over 50,000 unaccompanied children and families, to seek a better life here.

Unfortunately, children and families are not the only things moving along the smuggling routes that lead into our country. Criminal networks move hundreds of tons of drugs, hundreds of thousands of people, and countless weapons into and out of the United States, Mexico, Central America, and beyond. In return, billions of dollars in illicit proceeds pour back into criminal coffers, and some of that money winds up in the hands of corrupt officials or in the hands of terrorist groups like the FARC and Lebanese Hezbollah. Illicit trafficking and threat finance are real threats to our Nation's security and the region's stability.

As General Kelly mentioned during his recent testimony, it takes the collaboration of all our interagency partners, the Central Intelligence Agency (CIA), DHS, the Drug Enforcement Agency (DEA), and other law enforcement and security agencies, to protect the Southern approaches to the Nation. Our partners in the region also play a huge role in this mission. We are working closely with security and defense forces in Central America to help them disrupt the flow of illicit trafficking, dismantle criminal networks, and secure their borders.

Our primary focus right now is the Northern Triangle of Guatemala, Honduras, and El Salvador, countries that have been dealing with citizens' security crises in recent years, and we are seeing some remarkable progress in that region.

But, we should not lose sight of the fact that challenges like illicit trafficking are regional issues. They do not just affect Central America. They affect every single nation in the hemisphere.

<sup>1</sup> The prepared statement of Mr. Tovo appears in the Appendix on page 694.

Many countries are understandably concerned about the balloon effect that may come with success in the Northern Triangle, which is why defense officials from the United States, Mexico, Central America, Colombia, and Chile are meeting in Honduras this week to discuss ways to increase our collaboration. This is one promising sign of many.

At SOUTHCOM, we believe that there is a window of opportunity in Central America. Our partners are investing in their own security and economic prosperity. Organizations like the Inter-American Development Bank and the Millennium Challenge Corporation are lending their support and expertise. And, most importantly, we are seeing real political will in the region. This is perhaps the most promising sign of all.

We only have to look to Colombia to see the payoffs that come from a committed partner and a sustained U.S. engagement. With our support, I am optimistic that we can see the same sort of turnaround in Central America.

Thank you, and I look forward to your questions.

Chairman JOHNSON. Thank you, General.

I would like to just start, again, referring to that chart and graph over there, again, trying to get to the root cause. Do any of you three gentlemen, can you think of something—again, we have had the income disparity, we have had crime and violence in Central America for many years. We had 3,300, then 4,400, then about 4,000 in 2009, 2010, 2011, then we had Deferred Action on Childhood Arrivals and we got 10,000, 20,000, and then 52,000. To me, that looks like cause and effect. Is there another explanation that is plausible? Mr. Bersin.

Mr. BERSIN. So, if I might, Mr. Chairman, the one thing that everyone agrees with in the context of discussing immigration is that our system is broken and that it has been broken. And, regardless of where you end up in an argument, everyone starts off with the premise that the system is broken.

In fact, even when people argue that the executive actions are the cause of the increase in Central American migration, it seems to me that there is a little bit something disingenuous about it in this respect. This would be tantamount to a statement in a securities prospectus having to do with a business being willfully misrepresented by a broker who then fraudulently induces an investor to invest in the business, and then we end up blaming the business for having put the statement in the prospectus.

Whatever people believe about the—

Chairman JOHNSON. My question was pretty simple. Is there another cause that you can point to—

Mr. BERSIN. Yes—

Chairman JOHNSON [continuing]. That caused that surge or spike other than the proximate cause we see here with the Deferred Action on Childhood Arrivals?

Mr. BERSIN. Yes. The smugglers—

Chairman JOHNSON. You have got a broken system, but you are breaking it further.

Mr. BERSIN. The smugglers—

Chairman JOHNSON. I do not know where you were going with your—

Mr. BERSIN. The distortions by the smugglers and human traffickers of the State of facts is actually what caused the problem. I do not think there is actually any dispute about that.

Then, I think you can argue about what is the cause and what is the effect of the particular executive action, Mr. Chairman. But, I think it jumps to an unwarranted conclusion to say that the cause of the rise was something other than the distortion of a set of facts by the smugglers and traffickers who profited enormously from this phenomenon.

Chairman JOHNSON. What action caused the distortion of the facts?

Mr. BERSIN. Well——

Chairman JOHNSON. I mean, something started, and we had Deferred Action on Childhood Arrivals and then the smugglers, the coyotes distorted the facts, which built upon the problem. But, the proximate cause was Deferred Action on Childhood Arrivals.

Mr. BERSIN. With all due respect——

Chairman JOHNSON. I mean, again, you said that was not in dispute——

Mr. BERSIN. With all due respect, it is in dispute, because that would be the same as blaming that businessman for having put a statement in a prospectus that is actually—you could argue whether or not it is a good business proposition, but the distortion of that proposition is actually the cause of the fraud, not the statement in the prospectus. Thank you, sir.

Mr. PALMIERI. If I could add, Mr. Chairman, looking at your chart, there was also, as we know, a massive out-migration from the Western highlands of Guatemala, a very rural area that does depend very much on rural agricultural products. And, one of the things that has struck the entire Central American region is a coffee rust that decimated coffee harvests. We do include in the President's request programmatic support to help stabilize rural farm incomes and to help these coffee growers get their feet back on the ground, as well.

Chairman JOHNSON. I have got the information by country, and we went from about 1,300 in El Salvador to 16,000; 1,500 in Guatemala to 17,000; Honduras went from 900 to 18,000. So, this was across the board. It was not just simply at Guatemala.

General, do you have any comments on it, or——

General TOVO. I would just add, Mr. Chairman, that I think that we all can agree that there are both push factors and pull factors. On the pull side, the misinterpretation and, if you will, the strategic communications plan used by the coyotes to spread the misunderstanding of the policy was one aspect. I think we could also probably look at the economic downturn in the region around this same time, as well as the increasing violence that was also probably a factor. I think it is a combination of a variety of things.

Chairman JOHNSON. But, we also had an economic downturn here.

You have all testified, boy, if we have a secure, democratic, prosperous Central America, we have got no problems, which I would agree with. How do you create a secure, democratic, prosperous Central America when you have, from our previous panel, pretty much rampant corruption? We did meet with U.S. Ambassadors to

those countries yesterday, and there is corruption in the police departments. You can continue to add policemen to the force, but if that is a totally corrupt system—it was interesting to me talking about the gangs. I would have thought the gangs were related to drug trafficking, but it is really transit through Central America. The gangs are all about extortion rackets.

So, how do you throw another billion dollars into that region and expect any kind of different result?

Mr. PALMIERI. Sir, we think that the level of political will by the three leaders is an opportunity for us to join them in efforts to institute some very real reforms.

For example, in Honduras, the government signed an unprecedented agreement with Transparency International to open an office in their country to ensure that their budget process is more transparent and to have an outside civil society organization holding its government officials more accountable.

In addition, they have fired over 2,000 corrupt police in the last year and are committed publicly now to the Vice President on March 2 and 3 that they will begin hiring new police, vetting them, and putting them through a very rigorous training program that we hope will make them more responsive—

Chairman JOHNSON. Do you think it would be—

Mr. PALMIERI [continuing]. To their local communities.

Chairman JOHNSON. Do you think it would be prudent to make sure they meet those metrics and we actually see a measurable reduction in corruption before we dramatically increase the amount of aid we give them?

Mr. PALMIERI. I think it has to go hand in hand, sir. They have to be willing to take some real steps. We have to be sure that they are going to follow through on those activities. But, it is very important that U.S. leadership be part of this effort, and U.S. assistance is a concrete way for us to hold them and the people who are actually below the government leadership level to follow through on the commitments their leaders are making by leveraging U.S. assistance to insist on those reforms.

Chairman JOHNSON. OK. Senator Carper.

Senator CARPER. General Tovo, I was kidding you before. I said, I understand General Kelly could not be with us today, but I am told he sent his next best person, and that was you. That is a high compliment. If he were here, what do you think he would be saying to us? It could be just the same thing that you are saying, but you have heard him talk a lot about these issues. He is literally working on them today. What do you think he would be saying to us that relates to what Senator Johnson and I are asking?

General TOVO. Sir, first and foremost, I will tell you that he will tell you that we have a window of opportunity that he believes—he has met with all of the three Presidents we are talking about in Guatemala, Honduras, and El Salvador, and he believes that we have got a fairly unique opportunity where we have got leaders who are committed to providing their nations and their citizens the level of security and economic development that they deserve.

He would also add that Central America matters, given the proximity to our Nation and, of course, the networks that pass through Central America and enter our Nation fairly freely, and that we

ought to be concerned and we ought to do everything we can to improve the environment in Central America that has allowed those networks to flourish and to help our partners be better able to control their land, sea, and air domain and prevent the flow of trafficking.

Senator CARPER. The three of you had a chance to hear our first panel, and my guess is you heard from each of them something you agreed with and probably something you did not agree with. But, in terms of what you heard from the first panel, for each of you, what are some things you heard that you said, boy, that is right, they got it, and maybe in some other cases, no, I do not think so, each of you.

Alan, would you go first.

Mr. BERSIN. I thought the general conclusion that we had no choice but that there were significant problems and challenges facing us in this investment, I think the Ranking Member just raised the issue of corruption, and no question that corruption is an endemic problem, but also, it is a problem around the globe. And, the issue is by not taking action, the Edmund Burke term, all that is necessary for evil to triumph in the world is for enough good men and women to do nothing. We do not really have a choice just to say we are not going to take an action. I think the previous panel generally thought that we needed to be careful and prudent, but that we needed to take this action at this time, that there is a window of opportunity.

I obviously disagreed with Mr. Franco's depiction of the executive actions as being the prime cause of the pull into the country, as opposed to the traffickers' distortion of the facts, however you agree or disagree with them.

I also thought that Colombia is a guide, but as I indicated in my opening remarks, I think Mexico is a better guide.

Senator CARPER. OK. Thanks. I would say with respect to Mexico, one of the—I think it has dawned on Mexico in the last year or so that they have a dog in this fight in terms of allowing our folks to come illegally into their country because a lot of them will want to settle in Mexico, and that is not always in Mexico's best interest.

And this train, it used to be people would get free transportation pretty much all the way to the American border and I am convinced that that just does not happen anymore.

Mr. BERSIN. The growth in their economy has made them a receiving country, not the sending country. The outflow, as the Pew Foundation indicates, of Mexicans from the United States is actually greater than the inflow, legal and illegal, now. It is a function of economic development.

Senator CARPER. OK. Thanks.

Mr. Palmieri, what did you hear from the first panel that you said, oh, they got it. That is right. And, maybe an example of two where not so much.

Mr. PALMIERI. Yes. I would agree with Mr. Bersin that the role of Mexico in the way it was characterized in the first panel has been really a key element in helping us lower the levels of unaccompanied children reaching our border since last summer. Mexico

has really stepped up its game, and that would be one of the key areas of agreement I would have.

Although I am not a member of the MCC organization, I would take great disagreement with the characterization that El Salvador somehow was given a more lax standard for its more recent compact.

Senator CARPER. OK. Drill down on that a little bit.

Mr. PALMIERI. The scorecard indicators that MCC uses are published. They are public. The countries have to meet them. If they do not meet those indicators, they do not qualify for a compact. In the case of El Salvador, my understanding is that they did meet all of those indicators, and not as it was portrayed in the previous panel, there was no relaxing of that standard.

Senator CARPER. All right. Thanks. General Tovo.

General TOVO. Sir, we have hit on it a bit already, but—

Senator CARPER. That is all right. Repetition is good.

General TOVO. OK. Great.

Senator CARPER. Do not worry about it.

General TOVO. Last fall, we had hosted a conference in SOUTHCOM with all of the Central American leaders, Mexican representation and the Colombians, and it was designed—

Senator CARPER. At what level, presidents or—

General TOVO. We are talking Ministers of Defense.

Senator CARPER. OK.

General TOVO. Ministers of Defense and their chiefs of defense—

Senator CARPER. OK.

General TOVO [continuing]. So, SECDEF and chairman of the Joint Staff equivalent. We began the conference primarily with the Colombian Minister of Defense, but a bit from the Mexicans, as well, describing the actions that they took under Plan Colombia, and, similarly, what the Mexicans have undertaken to meet very similar challenges, with the idea that we would—once again, not apples to apples, comparison in the environments, but that there are lessons that can be drawn from both.

And, really, you heard a little bit of it in the earlier panel, but the fact that much of the resourcing requirement, certainly about 95 percent of the treasure, but all the blood and sweat came from the nations themselves, as well as the mobilization of the elites and the business leaders and all the other things that particularly Colombia undertook to really have the transformation that they have experienced in the last 14 or 15 years, and then had an opportunity to dialog with the various Central American leaders on how they could apply some of those same things.

So, I do believe that the Mexican experience and the Colombian experience both provide opportunities to guide all of our collective effort going forward for our Central American effort.

Senator CARPER. OK. Thank you.

Can you all talk just for a minute about our relationship with Mexico. How do you assess their efforts to curtail Central American migration through their country to our borders? They have this, like, multi-tier approach on the border. But, would you, Alan, just lead us off.

Mr. BERSIN. Again, we should recognize, Senator Carper, that the Mexicans are doing this because they perceive it to be in their interest for their reasons, and we are, in part, the beneficiaries of that determination. So, they have introduced not just the enforcement action. This is part of an immigration system that they are starting to create. They have provided for all Central Americans have a right to get a border crossing card, in effect——

Senator CARPER. Into Mexico.

Mr. BERSIN. Into Mexico, into the four contiguous border States, and they are permitted to stay there for a period of time——

Senator CARPER. What, a month or so?

Mr. BERSIN. It is a month—I am not certain, Senator——

Senator CARPER. OK.

Mr. BERSIN [continuing]. Whether it is a month or more than that.

Senator CARPER. I think it is a month or so. OK.

Mr. BERSIN. But, in any event, the point is that there is a legal permission to enter into Mexico, and what they have done is said, like very much as our border crossing card situation in the Southwest of the United States with Mexico operates. People can cross into California, for example, and move 25 miles north, 40 or 50 miles in New Mexico, and the same in Arizona, but you cannot go beyond that. Mexico has then put an enforcement structure, a layered security system in that is actually checking people from going further north. And, we have been the beneficiary of that legal system, together with an enforcement capacity.

Senator CARPER. OK. I know my time has expired. Do you all have anything you would like to add, General? OK. Thanks.

Chairman JOHNSON. I have got a few more questions.

General Tovo, you talked about Hezbollah. We had, yesterday in our hearing, we really did talk about the transnational criminal element, the whole big problem, which I really look at as sort of the root cause of all this, is the drug trafficking, human trafficking. Can you expound a little bit more in terms of what you know about the nexus between drug traffickers and terrorist organizations.

General TOVO. Mr. Chairman, certainly in a classified setting, we can give you a lot more detail. But, suffice it to say from open source, I think we know that in at least several occasions over the past decade and a half, terrorists have attempted to use our borders, our open borders, to do us harm. I think you may recall around the turn of the century, we had some attacks that were coming out of Canada, the Canadian Northern border. And, of course, back in 2011, we had Iranian Quds Force reported in the open source to be working with Mexican drug traffickers to try and commit an assassination plot right here in the Capitol of the Saudi Ambassador. So, two instances.

On a broader scale, however, we know that some of these organizations do receive financial benefit from the drug trade. A topic of much discussion amongst the intel community about how much cooperation and convergence, as we call it, there really is. There is dispute about that. But, I think it is fair to say that there is a good amount of profit that Lebanese Hezbollah makes off of illicit trafficking writ large on at least the order of tens of millions, and

much of it is funneled through the money laundering system and fuels their operations back in the Middle East.

Chairman JOHNSON. I appreciate your answer. We will have a secure briefing on this. We need to delve into that further.

You did mention balloon effect. Can you describe what you are talking about there.

General TOVO. Sure enough. Essentially, it is the effect we have when we are able to disrupt the drug flow in a particular region, and being an adaptive and an agile business operation, the—

Chairman JOHNSON. It just flows elsewhere.

General TOVO [continuing]. The traffickers find a new place. We have limited assets applied against this problem and, consequently, we cannot cover everywhere. And, so, in previous years, the Eastern Caribbean was the main vector, kind of right up into Florida, if you will. We were able to stymie that route and now it is primarily the isthmus through Central America. About a year or two ago, it was about 90/10, 90 percent through Central America and isthmus, 10 percent Eastern Caribbean. We have really concentrated on the last couple years through an operation we call Operation Martillo on the coastal waters around the Central American isthmus. It is now about 80/20. So, we do see the narcos adjust their flow based on where we place our effort.

Chairman JOHNSON. Right. We certainly saw the effect there in McAllen, Texas.

Mr. Bersin, you talked about the absence of comprehensive immigration reform. We have passed, and I have talked about this in my opening statements the last two hearings, we have passed, I do not know how many bills, six, seven, eight over the last two decades, starting with 1986, when we had, basically, amnesty for a little under four million illegal immigrants in this country. And, then, I just listed the number of bills we passed to solve this problem. I have also listed the number of illegal immigrants coming into this country.

So, the purpose of my efforts here is to really lay out the reality and start passing laws that actually work. Tell me what in the Senate comprehensive immigration bill would have actually reduced incentives for illegal immigration. What would have worked about that bill?

Mr. BERSIN. Mr. Chairman, I think there were border security considerations that were important in that bill—

Chairman JOHNSON. So, specifically, what was in that bill that was really good about border security, the elements we have got to be looking at to work—

Mr. BERSIN. Additional resources for protecting the border.

Chairman JOHNSON. How would those have been employed?

Mr. BERSIN. They have been employed to great effect over the last generation in a bipartisan way—

Chairman JOHNSON. No, I mean, in the Senate bill. Do you know specifically how those border resources would have been employed? I knew we threw a bunch of, a couple billion—a number of billions, tens of billions of dollars at it at the very last moment. Was there a really well thought out plan there?

Mr. BERSIN. The combination of elements that would have included additional personnel, better technology. I mean, we actually



know and have spent \$18 billion a year for a long time on border security and it has had its important effect in terms of reducing the flow of illegal migration into the country and creating a deterrent. And, we actually know and we have spent the money that has achieved that result both in Republican and Democratic administrations.

In addition to that, Senator, there was a——

Chairman JOHNSON. Let me just say, the number of illegal immigrants continues to rise in this country. After all those efforts, the Secure Fence Act of 2006, I mean, all those efforts, it just continues to rise.

Mr. BERSIN. I respectfully disagree with you, sir. The number of illegal migrants coming into the country is actually at a 70-year low, and I was there, present at the creation when we were arresting a million people a year in San Diego alone. So, with all due respect, the number of migrants entering illegally in the country today is at an all-time low in my lifetime, professional——

Chairman JOHNSON. I was referring to the number of people in this country illegally continues to increase. It has flattened out for a little, we have had kind of a sluggish economy, no doubt about that.

Mr. BERSIN. The comprehensive immigration reform actually created a system by which people could actually earn their way to legal status and come out of the shadows, and that would have a great effect on the communities of this country, I think, by——

Chairman JOHNSON. You do not believe, like Deferred Action on Childhood Arrivals, that would create an incentive for illegal immigration prior to securing the border?

Mr. BERSIN. No, sir, not in the way that the distortions that took over a summer ago had an effect. I think that, in fact, when there is a system that is operating and that permits people to move through specified stages, that, in fact, this would not lead to the kind of surge that we saw in the summer of 2014.

Chairman JOHNSON. Well, I guess that is a basic disagreement, because I look at Deferred Action on Childhood Arrivals as a huge incentive for what caused that. And, again, you denied that. You are saying it is the distortion of that.

My concern would have been to offer a path to citizenship prior to securing our border would have been an incentive for illegal immigration, not having an adequate guest worker program, and two-hundred-sixty-two billion in benefits for non-U.S. citizens, all those things are incentives for illegal immigration, and from my standpoint, what immigration reform has to be is eliminating those incentives, be honest, taking a look at things that we do, like treating children from Central America differently than we treat from Mexico, trying to look at those things honestly, lay the reality out there and say, let us try and eliminate or drastically reduce those incentives for illegal immigration. I do not believe the Senate bill did that.

I just have to say that because I hear time and time again that if we just would have passed that bill, everything would have been coming up roses. No. We passed a number of bills. We have not fixed the problem. So, the purpose of this Committee is laying out the reality, accepting some of these truths—just accepting them,

and we are not. So, I do not want to delude ourselves in this hearing.

Mr. BERSIN. Mr. Chairman, let me just respond to one point you made that I think may make the larger point. The difference that was made in the last panel between the difference of how we treat Mexican children and how we treat Central American children, that accounts for a difference. It does. But, let us actually look—and I was honored to be involved with Attorney General Reno in the original *Reno v. Flores* settlement that actually created a system for dealing with Mexican children.

Dealing with Central American children who are further—they are not contiguous to our borders—created a problem. Republicans and Democrats together passed the Wilberforce Act in 2007–2008. It provided a certain judicial process. But, what has not happened, with all due respect, Mr. Chairman, is we never resourced the Immigration Court to be able to actually enforce the law the way it was intended to be enforced by the legislation. If, in fact, we had an Immigration Court that could timely deal with these cases, you would create a deterrent, sir, in very much the same way as we have seen in the Mexican system.

Last year, the administration attempted to ask the Congress for three-plus billion dollars to deal with the unaccompanied minor surge. A significant portion of that was intended to remedy that problem and provide an infrastructure of law that would permit us to actually deport people if they could not establish asylum, if they could not establish other conditions that the Act provided for.

So, that is part of the broken immigration system, sir.

Chairman JOHNSON. OK. Thank you. Senator Carper.

Senator CARPER. Let us just stay on immigration reform for a moment. I tend to be a glass half full guy. Some people say we will never get immigration reform. I hope that is wrong. But, when you look back at the legislation about a year and a half ago, I can point out any number of things that I was not enthusiastic about, but I still believe that part of the solution for the issues that are before us is comprehensive immigration reform done right.

Let me just ask, starting with you, General Tovo, just think about immigration reform and give us a little advice, because we will have another chance to pursue this maybe even this Congress. I hope so. Give us some advice on maybe looking back at what we tried to do a year and a half ago, maybe some parts of that you thought made sense, maybe some that you did not. Just give us some advice on what to do more of or less of this time through.

General TOVO. Senator, I would like to cede any time on that one to the right here. It is purely a policy question that I am not equipped to handle.

Senator CARPER. All right. Thank you. Mr. Palmieri.

Mr. PALMIERI. Again, I would defer to the Department of Homeland Security on the issue.

Senator CARPER. Oh, you do not want him to answer this, do you?

Mr. PALMIERI. But, I will say one thing that I think a comprehensive immigration reform could have assisted, is in making clear what the ground rules are and taking away the ability of alien smugglers to distort what is happening in the United States

and to transmit messages and exploit vulnerable people who think that there may be some potential benefit for them if they can get to our border.

In addition, I think a comprehensive immigration reform undertaken now, given some of the demographic patterns we see in Mexico and even in Central America over the next 10 to 15 and 20 years, with declining birth rates, might be able to get us to a situation where we would not see increasing levels of illegal immigration in the United States.

Senator CARPER. All right. Thank you. Mr. Bersin.

Mr. BERSIN. Senator Carper, I would like to defer to the—  
[Laughter.]

Genius to my right—

Senator CARPER. If you keep this up, we will have to bring back the first panel. [Laughter.]

Mr. BERSIN. Senator, I will leave it to others to talk about specific legislation, but I will say that the elements that were in that bill, not perfect, to be sure, as the Chairman pointed out, actually had the four key pillars—

Senator CARPER. Go ahead and reiterate those. Just restate those.

Mr. BERSIN. The need for border security. The need to provide for people to come out of the shadows, however you arrange that. The need to deter through workplace enforcement, the hiring of illegal labor in the United States. And, fourth, we need to actually address the business needs for high-skilled labor. Those are the four big pillars, and I think the legislation got those right, although reasonable people can differ about the extent to which changes could be made and improvements offered. That never happened in terms of any conference between the Houses, the Senate and House.

Senator CARPER. We talked in some of our of our earlier hearings about force multipliers. We have not done that today in any great extent, but I think a lot of the force multipliers is the kind of technologies that can be deployed between the ports of entry to make our Border Patrol folks more effective, but also the force multipliers that we can deploy at the ports of entry to enable us to better pick out those who are bringing in contraband drugs, whatever. I also think of immigration reform as a force multiplier, done right, force multiplier in its own right.

We talked earlier a little bit and with this panel, but especially with the last panel, about Plan Colombia. But, in Plan Colombia, we provided a variety of assistance to support the Colombian government in their efforts to combat the drug cartels, and in Mexico, we supported the Merida Initiative to help restore the rule of law in that country and provide more economic opportunity.

Can we discuss, what lessons can be applied from those programs to the assistance that we are discussing today for the Northern Triangle? Some on Plan Colombia, if you will, but especially on the Merida Initiative. General Tovo, would you like to take that first, please.

General TOVO. Sure. I will focus on Plan Colombia, because Mexico is in the NORTHCOM area and they are much more able to answer the Merida Initiative questions, as I think Mr. Palmieri can, as well.

I think—we talked a little bit about this already, but the keys of Plan Colombia were really the commitment and the national leadership to the plan. It was a Colombian——

Senator CARPER. National leadership in Colombia?

General TOVO. In Colombia.

Senator CARPER. Yes.

General TOVO. Certainly, it had good support here in the United States, but it was a Colombian plan developed with support from the United States. It involved mobilization of the right sectors of society to support the plan. It involved their sacrifice and their skin in the game, if you will, and their money, their taxes. And, so, I think those are all things that have been emphasized to our partners in Central America and they have already started doing some of those things.

Honduras has a security tax that largely funds their military. They are working to see how they can mobilize their business elites in the power sectors of Honduran society.

So, I think they are on the right track, and I think taking those kind of lessons and then continuing to reinforce them with our partners in Guatemala, El Salvador, and Honduras are very important.

Senator CARPER. Good. Thanks for that. Mr. Palmieri.

Mr. PALMIERI. Yes. I also agree with the concept of Plan Colombia as it could be applied in Central America. Alvaro Uribe did talk about making sure he first secured the environment, that he had mayors able to go back into communities. But, once they were there, he believed, too, that you needed to fill the vacuum with some economic opportunity and then to hold leaders, local leaders and government officials, accountable for the delivery of services.

That is part of what we are trying to do with the request. It includes funds for good governance activities to help these governments hold their and improve their local officials' ability to deliver social services.

And, I agree with Chairman Johnson that we need a detailed plan and we need to see the countries taking actions. That has to be the leading indicator, that they themselves are doing things first. And, while we do see some evidence that they are taking action, I think it is an important requirement, as it was in Plan Colombia, that there be a detailed plan.

Senator CARPER. Good. Thanks. Mr. Bersin.

Mr. BERSIN. Just two points, Senator Carper. One is that, and without gain-saying anything that General Tovo, Mr. Palmieri have said, or the previous panel, about the importance of this being owned by the country, no question about that, but let us not underestimate the extent to which the United States was a partner with both Colombia and is a partner with Mexico, not dictating, but providing the technical assistance, providing funding, and let us not forget that General Alejo, who was President Uribe's chief architect in the law enforcement area, started out as an officer in a transnational criminal investigative unit that was a vetted unit run by the—organized by the United States. So, this is a partnership and we need to help them jump-start it while holding them accountable and having metrics that would test the business proposition of the investment.

And, then, the second point I would make is this is—I wish it were not the case, but this is invariably a longer-term process. This is not 2 years. It is not 3 years. Plan Colombia was 10 or more years. We are just seeing the end of that investment actually possibly reaping the benefits. The same thing with Mexico. But, look at the progress we have seen in Mexico since Merida in 2006. It takes a while to do it, but there are milestones along the way to which we have to hold our partners accountable, but also ourselves.

Senator CARPER. Thank you.

Mr. Chairman, I think we have gotten some good input here today, and we have certainly gotten it from this panel. We got it from the first panel, as well, and we thank you all very, very much.

Chairman JOHNSON. OK. I agree with that, and let us give the panel the last opportunity. We will start with the General. Any final comments?

General TOVO. Mr. Chairman, yes. Thanks. I appreciate it. I would just like to close with we believe the networks that bring people drugs, money, guns, north and south, and then south to north, are a national security threat to this country. I think we should be concerned about it. And, we should have the view that the defense does not start on the goal line. We should not start the defense of our Nation against those threats on the goal line. And, helping establish our neighbors' ability to maintain stability and security within Central America helps extend that defensive zone.

And then, last, I think what we have all talked about is the importance not only of the plan that the Central Americans have developed, but the supporting plan from the USG as a holistic effort that really works on more than security, because security is kind of first principle, but that it does need to have a focus on good governance, eliminating, as best as possible, corruption, and provide an opportunity, because if the people in Central America have opportunity and they can live in a secure environment, they will stay there.

Chairman JOHNSON. Thank you, General, and by the way, thank you for your service to our country. Mr. Palmieri.

Mr. PALMIERI. Yes, sir. I just wanted to follow up quickly on one item. I do think the Commission Against Impunity in Guatemala is a critical anti-corruption effort that we should see the Guatemalan government take, even ahead of any assistance arriving there.

Second, sir, I do think—

Senator CARPER. I am sorry. Could you just elaborate on that just a little bit.

Mr. PALMIERI. Yes. The Commission Against Impunity was established in Guatemala in the last decade. It is focused on improving the prosecutorial capabilities of the Attorney General's office. It has tackled some high-profile impunity cases, some of them which dated from the internal war in Guatemala, others that have dealt with more recent phenomena, like corruption in the prisons. It is a critical force multiplier in terms of an external entity helping professionalize the Attorney General's ability in Guatemala to attack corruption issues.

Second, I just want to thank the Committee for this hearing on this topic. Vice President Biden has made very clear to all of us

working on this issue, and he has worked very hard on this issue, that we have to do this in partnership with the U.S. Congress, that to request this level of money to support our national security interest in Central America means that we have to constantly be willing to come up and have a dialogue, to keep you informed, and to produce the detailed plans that show that this money will be used effectively, and that what we do in Central America can produce a different outcome this next time.

Thank you, sir.

Chairman JOHNSON. Thank you. Mr. Bersin.

Mr. BERSIN. Thank you for the opportunity, Mr. Chairman. I give and have given my friends in several of the governments in Central America a copy of Doris Kearns Goodwin's book, *The Bully Pulpit*, the story of Teddy Roosevelt and William Howard Taft, and I do that because, in fact, it reminded me of something I had forgotten, which is that we had a very serious corruption problem in this country at the turn of the 20th Century and that it was Teddy Roosevelt, the Progressive Era, that actually turned that system around, with the help of the journalists, which is what Kearns Goodwin writes about.

But, we need to engage with Central America, and I give it to them to demonstrate both that they are not in a situation they cannot reverse, and I would submit that we have to be at their side serving both as a model for Central America, but also as an example that you actually can renew your society and that we do it all the time when we have problems and we need to support their effort to do that in their society.

Thank you, sir.

Chairman JOHNSON. Well, thank you again. Thank you all for your thoughtful testimony, your thoughtful answers to our questions.

This hearing record will remain open for 15 days, until April 9 at 5 p.m., for the submission of statements and questions for the record.

This hearing is adjourned.

[Whereupon, at 4:24 p.m., the Committee was adjourned.]

## A P P E N D I X

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**Opening Statement of Chairman Ron Johnson**  
***“Securing the Border: Understanding and Addressing the Root Causes of Central American Migration to the United States”***  
**March 25, 2015**

*As prepared for delivery:*

Good afternoon and welcome.

Today, we continue our border series hearings with an examination of both the push and pull factors that led to the apprehension of more than 68,000 children and family units at the southwest border last year.

During fiscal year 2014, U.S. Customs and Border Protection apprehended 51,705 unaccompanied minors from El Salvador, Guatemala and Honduras. For the first time since FY2009, the number of Central American children exceeded the number of Mexican children attempting to enter the U.S. illegally. The vast majority of those attempted to enter the U.S. through the Rio Grande Valley sector in Texas.

Last month, while I was in the Rio Grande Valley, border patrol agents told me stories of families coming across the river, setting campfires on the U.S. side, and waiting for a border patrol agent to pick them up. When agents responded, it was not uncommon for them to hear, “What took you so long?” What does this say about our immigration policies when people entering this country unlawfully *want* to be caught?

Many of those who entered the U.S. illegally last summer remain here today. According to the U.S. Department of Health and Human Services, 60,387 unaccompanied children have been released to relatives or sponsors living in the United States awaiting an immigration judge to determine their fate. The question is, how many will comply with their “notice to appear” and actually show up at their court hearings?

We learned last summer just how dangerous the trek through the Central America-Mexico corridor was. By enticing people to make that journey, we need to acknowledge that our laws and actions incentivize individuals to subject themselves and their children to a dangerous, horrific and sometimes deadly journey. There is no doubt that violence and poverty drive many to flee their home countries – the “push factors.” But an El Paso Intelligence Center report stated that for 219 of the 230 children and migrant families interviewed, the primary reason for illegally migrating to the U.S. was the belief that they could stay. In other words, our broken immigration laws and ineffective enforcement actions incentivized their illegal entry.

This hearing examines the root causes of Central American migration to the United States. Our government witnesses will explain what the U.S. government is doing to address the root causes of illegal immigration from three Central America countries, specifically Guatemala, El Salvador and Honduras. I am also interested in learning what Congress can do to reduce some of the incentives, or “pull factors.”

I look forward to the testimony of all of our witnesses today.

**Opening Statement of Ranking Member Thomas R. Carper**  
***“Securing the Border: Understanding and Addressing the Root Causes of***  
***Central American Migration to the United States”***  
***March 25, 2015***

*As prepared for delivery:*

Last week, we heard about the enormous federal outlays to strengthen the security of our border with Mexico – billions of dollars for boots on the ground, fencing, aerostats, observation towers, drones and other assets.

Yet despite these investments, we know that last summer tens of thousands of families and unaccompanied children arrived at the U.S. - Mexico border in South Texas. Most of these families and children, some as young as four years old, had traveled 1,500 dangerous miles from Central America. And most did not slip past our borders undetected or even try to evade border patrol agents. They surrendered voluntarily, often seeking asylum.

Fortunately, the number of Central American children and families apprehended at the border this year is well down from last summer, and even from this time last year. For example, Border Patrol agents have apprehended 12,509 unaccompanied minors at the southwest border so far in fiscal year 2015, compared to 21,403 at this time last year.

We have mother-nature to thank, in part, for that decline. But we also owe a great deal of thanks to our own government and the governments of Mexico and the Northern Triangle – Guatemala, Honduras, and El Salvador –for stepping up in response to the surge.

In particular, I am pleased that the Northern Triangle governments have worked together on a “truth campaign” to warn would-be migrants about the very real dangers of the trip and the likelihood that they will be returned home once they arrive in this country.

But border officials and experts know we have not seen the last of desperate migrants from Central America.

I visited all three of these countries last year and saw first-hand how corruption and lawlessness, as well as lack of economic opportunity and hope led so many parents or relatives to do the unthinkable – put their children in the hands of human smugglers to try to get their flesh and blood to the United States. Indeed, if we were to put ourselves in the place of those parents, I suspect many of us would do the same.

Corruption and violence in the Northern Triangle are widespread, fueled in part by America's appetite for illegal drugs. In some communities in those three nations, gangs rule by brute force and fear. Too often, police officers don't police; prosecutors don't prosecute; and judges don't administer justice.

For too long, the governments of these countries have been unable or unwilling to tackle these challenges effectively. Fortunately, there are now real signs of change.



The leaders of Guatemala, Honduras and El Salvador have embarked on an unprecedented collaborative effort, called the Alliance for Prosperity, to boost security and prosperity within their region.

Last week, Chairman Johnson and I met with the foreign ministers from these countries in an effort to learn more about this plan. They told us they are committed to investing their own money in the development of their infrastructure and workforce, and to making difficult changes to promote transparency, security and the rule of law.

Yesterday, Chairman Johnson, along with Senators Heitkamp, Shaheen, and I, met with four of our country's Ambassadors to Central America in order to gain their perspectives on whether those changes are for real. Among other things, I am interested in hearing from our witnesses today about their impression of the plan's progress in the Northern Triangle and its challenges.

We should be good neighbors and support Guatemala, Honduras and El Salvador in this effort, just as we helped Colombia reverse its downward spiral with Plan Colombia in the 1990s. We already provide a considerable amount of assistance to Central America – as our second panel will describe in detail today – but we are long overdue for a significant and comprehensive focus on the region.

I was pleased to see the President request \$1 billion dollars in next year's budget to partner with the governments of Central America as they seek to address these challenges. For example, some of the funding would support better police training and youth centers for those at risk of gang violence. Some of it would be used to attract foreign investment or support efforts to build a stronger court system and electric grid.

This is important for their future and for our own security; no one benefits if this region falls deeper into the sway of violence and trafficking. But the aid must be tied to strong accountability and measurable outcomes – a message I know Vice President Biden has already shared with the leaders of the Northern Triangle. Addressing these tough challenges should be a shared responsibility among the United States, the governments of the Northern Triangle, other nations and other partners. The private sector and international development banks must step up, as well.

Achieving the changes that are needed in these nations won't be easy, but I believe we have a moral obligation to help. Clearly, this is a shared responsibility. But like they say at Home Depot, 'You can do it. We can help.' After all, addiction in the U.S. to cocaine, heroin and other illegal drugs directly contributes to their misery. But if we work together, real progress can be made. If you don't believe it, just take a look at Colombia today.

In closing, let me end by saying that if we turn our backs on these countries, I am convinced that we will be back here again, this summer or 10 years from now, dealing with another expensive and heartbreaking humanitarian crisis on our border. We've got to be smarter than that.



U.S. Senate Committee on Homeland Security and Governmental Affairs Hearing  
on "Securing the Border: Understanding and Addressing the Root Causes of  
Central American Migration to the United States"

March 25, 2015

William Kandel

Analyst in Immigration Policy  
Congressional Research Service

Chairman Johnson, Ranking Member Carper, and members of the Committee, thank you for the opportunity to testify before you today on behalf of the Congressional Research Service. This testimony provides background on the circumstances leading up to the surge in unaccompanied alien children (UAC) apprehended in FY2014, discusses current policy regarding UAC treatment, and then addresses the following questions: 1) how many UAC and family units were apprehended at the Mexico-U.S. border in FY2014; 2) how many of the apprehended FY2014 UAC were transferred from the Department of Homeland Security (DHS) Customs and Border Protection (CBP) to the Department of Health and Human Services' (HHS) Office of Refugee Resettlement (ORR) custody; 3) how many of the FY2014 apprehended UAC applied for asylum and how many UAC asylum cases in FY2014 were approved; 4) how many of the FY2014 apprehended UAC are awaiting court dates; 5) how many of the apprehended FY2014 UAC with scheduled court dates attended their court hearings; and 6) how many FY2014 apprehended UAC were returned to their countries of origin.

This analysis focuses almost entirely on unaccompanied alien children because CRS was not able to obtain data on family units except for the number of family units that were apprehended in FY2013 and FY2014. In several cases, CRS has augmented FY2014 data with data going back to FY2009 to provide context for the FY2014 UAC surge. Not all the data shown for a given year presented in this testimony correspond to children who were apprehended in the same year. In some cases, such as asylum adjudication outcomes, figures for one year may correspond to children who were apprehended in earlier years. Other data caveats are provided throughout the text.

## Background

Unaccompanied alien<sup>1</sup> children are defined in statute as children who lack lawful immigration status in the United States,<sup>2</sup> are under the age of 18, and are without a parent or legal guardian in the United States or no parent or legal guardian in the United States is available to provide care and physical custody.<sup>3</sup>

The number of UAC apprehended at the Southwest border by CBP reached a peak of 68,541 in FY2014. During a June 2014 hearing, Some members of Congress and the Administration characterized the issue as a humanitarian crisis.<sup>4</sup> At that time, DHS projected that FY2015 apprehensions would be more than double the FY2014 apprehensions.<sup>5</sup>

The reasons why unaccompanied children migrate to the United States are often multifaceted and difficult to measure analytically. CRS has analyzed several out-migration-related factors, such as violent crime rates, economic conditions, rates of poverty, and the presence of transnational gangs.<sup>6</sup> CRS also analyzed in-migration related factors, such as the search for economic opportunity, the desire to reunite with family members, and U.S. immigration policies. These factors may have contributed to the surge in the number of UAC that were apprehended along the Southwest border in FY2014.

## Current Policy

Two laws and a settlement, discussed below, most directly affect U.S. policy on the treatment and administrative processing of UAC: the Flores Settlement Agreement of 1997 (*Flores Agreement*); the Homeland Security Act of 2002 (HSA); and the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA).

During the 1980s, allegations of UAC mistreatment by the former Immigration and Naturalization Service (INS)<sup>7</sup> caused a series of lawsuits against the U.S. government that eventually resulted in the *Flores Settlement Agreement (Flores Agreement)* in 1997.<sup>8</sup> The *Flores Agreement* established a nationwide policy for the detention, treatment, and release of UAC and recognized the particular vulnerability of UAC while detained without a parent or legal guardian present.<sup>9</sup> It required that immigration officials detaining minors provide: (1) food and drinking water; (2) medical assistance in emergencies; (3) toilets and sinks; (4) adequate temperature control and ventilation; (5) adequate supervision to protect minors from others; and (6) separation from unrelated adults whenever possible.

Five years later, the Homeland Security Act of 2002 (HSA; P.L. 107-296) divided responsibilities for the processing and treatment of UAC between the newly created DHS and the Department of Health and

<sup>1</sup> *Alien*, a technical term appearing throughout the Immigration and Nationality Act (INA), refers to a foreign national who is not a citizen or national of the United States.

<sup>2</sup> The child may have illegally entered the country or been legally admitted but overstayed their length of admittance (i.e., a visa overstay.)

<sup>3</sup> 6 U.S.C. §279(g)(2).

<sup>4</sup> Senate Judiciary Committee hearing on *Oversight of the Department of Homeland Security*, June 11, 2014.

<sup>5</sup> House Report 113-481 included a projection of 145,000 UAC apprehensions anticipated for FY2015.

<sup>6</sup> See CRS Report R43628, *Unaccompanied Alien Children: Potential Factors Contributing to Recent Immigration*, coordinated by William A. Kandel.

<sup>7</sup> The Homeland Security Act of 2002 abolished the Immigration and Naturalization Service (INS) and its functions were split in the Departments of Homeland Security, Justice, and Health and Human Services.

<sup>8</sup> *Flores v. Meese—Stipulated Settlement Agreement* (U.S. District Court, Central District of California, 1997).

<sup>9</sup> See DHS Office of Inspector General, *CBP's Handling of Unaccompanied Alien Children*, OIG-10-117, Washington, DC, September 2010.

Human Services' (HHS) Office of Refugee Resettlement (ORR). The HSA assigned apprehension, transfer, and repatriation responsibilities to DHS. The law assigned responsibility to HHS for: coordinating and implementing the care and placement of UAC in appropriate custody; reunifying UAC with their parents abroad if appropriate; maintaining and publishing a list of legal services available to UAC; and collecting statistical information on UAC, among other things.<sup>10</sup> The HSA also established a statutory definition of UAC.

In 2008, Congress passed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPPRA, P.L. 110-457). The TVPPRA requires that children from contiguous countries be screened by CBP within 48 hours of being apprehended to determine: 1) that the child has not been a victim of a severe form of trafficking in persons and that there is no credible evidence that the minor is at risk of being trafficked should the minor be returned to his country of nationality or of last habitual residence; 2) that the child does not have a possible claim to asylum; and 3) that the child is able to make an independent decision to voluntarily return to his country of nationality or of last habitual residence.<sup>11</sup>

Although the TVPPRA sets forth screening requirements for unaccompanied children from contiguous countries, in March 2009, DHS issued a policy that, in essence, made the screening provisions applicable to all unaccompanied alien children.<sup>12</sup> Those UAC who opt not to return voluntarily as well as UAC from noncontiguous countries are transferred to the care and custody of HHS while they go through formal removal proceedings.<sup>13</sup> During this time, UAC may seek various forms of immigration relief described below, including asylum. If denied asylum by USCIS, a UAC may request asylum a second time during the formal removal hearing with EOIR.

The TVPPRA also directs the Secretary of DHS, in conjunction with other federal agencies, to develop policies and procedures to ensure that, if and when they return voluntarily or are removed from the United States, UAC are safely repatriated to their country of nationality or of last habitual residence.

## Analysis of UAC Statistics

Several agencies in DHS and HHS Office of Refugee Resettlement share responsibility for the processing, treatment, and placement of UAC. DHS's CBP apprehends and temporarily detains UAC arrested at the border while DHS's Immigration and Customs Enforcement (ICE) handles custody transfer, removal and repatriation responsibilities. ICE also apprehends UAC in the interior of the country and represents the U.S. government in removal proceedings. Among its UAC responsibilities, HHS coordinates and implements the care and placement of UAC in appropriate custody, typically in shelters initially and subsequently with family members living in the United States.

DHS's U.S. Citizenship and Immigration Services (USCIS) is responsible for the initial adjudication of asylum applications filed by UAC. The Executive Office for Immigration Review (EOIR) in the Department of Justice (DOJ) conducts immigration proceedings that determine whether UAC may be allowed to remain in the United States or must be deported to their home countries.

<sup>10</sup> P.L. 107-296, Section 462. ORR assumed care of UAC on March 1, 2003. It subsequently created the Division of Unaccompanied Children's Services (DUCS) for addressing the requirements of this population.

<sup>11</sup> P.L. 110-457, §235(a)(2)(A).

<sup>12</sup> 8 U.S.C. §1101 et seq. U.S. Congress, Senate Committee on the Judiciary hearing on *The Trafficking Victims Protection Reauthorization Act: Renewing the Commitment to Victims of Human Trafficking*, testimony of Acting Deputy Assistant Secretary Kelly Ryan, September 14, 2011.

<sup>13</sup> If, after assessing the unaccompanied child, CBP personnel determine the minor to be inadmissible under the INA, they can allow "voluntary departure" of the child from a contiguous country. In this case, the unaccompanied child is permitted to return immediately to Mexico or Canada, and does not face administrative or other penalties. 8 U.S.C. §1225(a)(4).

### UAC and Family Unit Apprehensions by CBP

In FY2014, CBP apprehended more UAC than in any of the previous five years and more than three times as many as in FY2009 (**Table 1**). The majority of UAC apprehensions in FY2014 occurred within the Rio Grande (73%) and Tucson (12%) Border Patrol sectors.<sup>14</sup> Nationals of Guatemala, Honduras, El Salvador, and Mexico accounted for almost all UAC apprehended at the Mexico-U.S. border.

**Table 1. UAC Apprehensions by Country of Origin, FY2009-FY2014**

|               | Mexico | Guatemala | El Salvador | Honduras | All Other | Total  |
|---------------|--------|-----------|-------------|----------|-----------|--------|
| <b>FY2009</b> | 16,114 | 1,115     | 1,221       | 968      | 250       | 19,668 |
| <b>FY2010</b> | 13,724 | 1,517     | 1,910       | 1,017    | 466       | 18,634 |
| <b>FY2011</b> | 11,768 | 1,565     | 1,397       | 974      | 363       | 16,067 |
| <b>FY2012</b> | 13,974 | 3,835     | 3,314       | 2,997    | 361       | 24,481 |
| <b>FY2013</b> | 17,240 | 8,068     | 5,990       | 6,747    | 714       | 38,759 |
| <b>FY2014</b> | 15,634 | 17,057    | 16,404      | 18,244   | 1,202     | 68,541 |

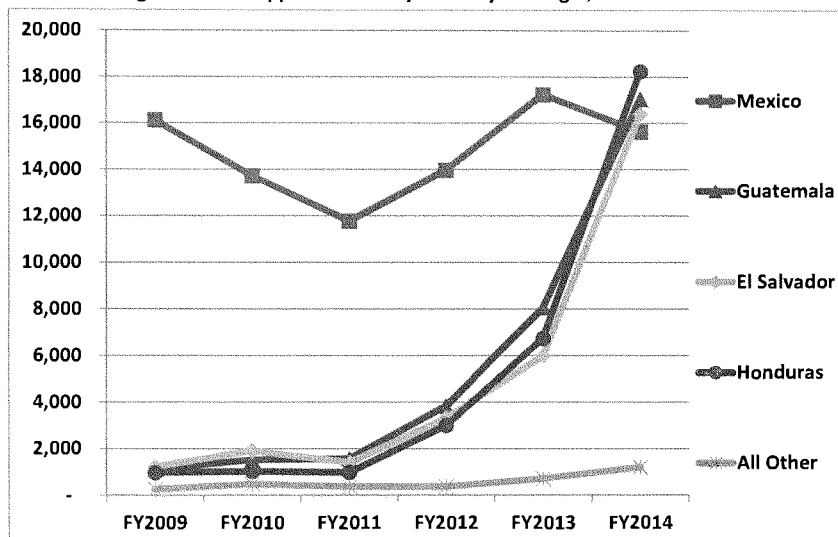
**Source:** Customs and Border Protection, *Southwest Border Unaccompanied Alien Children*, <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>.

**Notes:** All figures are only for the Southwest border.

Flows of UAC from Mexico remained relatively steady through FY2014 (**Figure 1**). In contrast, the numbers of UAC from Guatemala, Honduras, and El Salvador increased starting in FY2012. In FY2009, Mexican UAC accounted for 82% of the total 19,668 UAC apprehensions in that year, while the three Central American countries accounted for 17%. By FY2014, those proportions had almost reversed, with Mexican UAC comprising only 23% of the total 68,541 UAC apprehensions that year and UAC from the three Central American countries comprising 75%.

<sup>14</sup> Customs and Border Protection, *Southwest Border Unaccompanied Alien Children*, <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>.

Figure 1. UAC Apprehensions by Country of Origin, FY2009-FY2014



Source: Customs and Border Protection, *Southwest Border Unaccompanied Alien Children*, <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>.

Notes: All figures are only for the Southwest border.

Apprehensions of family units (unaccompanied minors with a related adult) also increased considerably, from 14,855 in FY2013 to 68,445 in FY2014.<sup>15</sup> Of these apprehended family units, 90% originated from Guatemala, El Salvador, or Honduras.

### UAC Transfer to HHS-ORR

The Unaccompanied Alien Children Program in HHS-ORR provides for the custody and care of unaccompanied alien minors. Not all UAC are transferred to ORR; some UAC from contiguous countries voluntarily return home. HHS-ORR has not publically released data on how many UAC returned home voluntarily in FY2014.

**Table 2** shows overall increases in UAC in ORR custody starting in FY2012, when the total doubled to 13,625 from 6,854 in the previous year. Between FY2012 and FY2013, the number of UAC that were transferred to ORR roughly doubled again to 24,915; and in FY2014, the number was 57,496.

<sup>15</sup> Ibid. CRS was unable to get apprehension data for families prior to FY2013.

**Table 2. UAC Referrals to HHS-ORR, FY2009-FY2014**

|               | Mexico | Guatemala | El Salvador | Honduras | All Other | Total  |
|---------------|--------|-----------|-------------|----------|-----------|--------|
| <b>FY2009</b> | 1,067  | 1,674     | 1,528       | 1,378    | 445       | 6,092  |
| <b>FY2010</b> | 1,490  | 1,932     | 2,157       | 1,277    | 1,354     | 8,210  |
| <b>FY2011</b> | 1,392  | 2,051     | 1,622       | 1,201    | 588       | 6,854  |
| <b>FY2012</b> | 1,090  | 4,633     | 3,679       | 3,679    | 545       | 13,625 |
| <b>FY2013</b> | 740    | 9,127     | 6,414       | 7,400    | 1,233     | 24,915 |
| <b>FY2014</b> | 1,150  | 18,399    | 16,674      | 19,549   | 1,725     | 57,496 |

**Source: FY2009-FY2011:** ORR, Division of Children's Services, nonofficial data provided to Women's Refugee Services and cited in Women's Refugee Commission, *Forced from Home: The Lost Boys and Girls of Central America*, October 2012, Chart 1; **FY2012-FY2014:** U.S. Department of Human Services, Administration for Children and Families, Office of Refugee Resettlement, Unaccompanied Alien Children Program, *Fact Sheet*, November 2014 and ORR, *About Unaccompanied Children's Services*, accessed by CRS on March 16, 2015, <http://www.acf.hhs.gov/programs/orr/programs/ucs/about#facts>.

ORR arranges to house the child in either one of its shelters or foster care; or the UAC program reunites the child with a sponsoring family member.<sup>16</sup> According to ORR, the majority of the youth are initially cared for through a network of state-licensed, ORR-funded care providers.<sup>17</sup> Between FY2008 and FY2010, UAC remained in ORR care an average of 61 days. Total time in custody ranged from less than one day to 710 days.<sup>18</sup> In May 2014 ORR reported that the average length of stay in the program was about 35 days.<sup>19</sup>

### UAC Family Reunification

ORR is required to place unaccompanied minors in the least restrictive setting that is in the best interest of the child. In FY2014, ninety-six percent of discharged UAC were released to a sponsoring family member. Of this group 58% were parents or legal guardians, 29% were other relatives, and 9% were non-relatives. The remaining 4% of UAC were discharged for other reasons, such as a transfer to DHS due to aging-out of UAC status.<sup>20</sup> It is important to note that removal proceedings continue even when UAC are placed with parents or other relatives.

Family reunification is often cited as a primary reason for the UAC surge.<sup>21</sup> Demographic and survey data provide evidence of linkages between the three UAC surge countries and their foreign-born populations living in the United States. U.S. Census data from 2012 indicate that U.S. residents born in El Salvador

<sup>16</sup> The *Flores Agreement* outlines the following preference ranking for sponsor types: (1) a parent, (2) a legal guardian, (3) an adult relative, (4) an adult individual or entity designated by the child's parent or legal guardian, (5) a licensed program willing to accept legal custody, or (6) an adult or entity approved by ORR. *Flores v. Reno Stipulated Settlement Agreement*, 1997, p.10.

<sup>17</sup> Olga Byrne and Elise Miller, *The Flow of Unaccompanied Children Through the Immigration System*, Vera Institute of Justice, Washington, DC, March 2012, p. 17.

<sup>18</sup> *Ibid.*

<sup>19</sup> *ORR UAC Fact Sheet*, May 2014.

<sup>20</sup> Unpublished data provided to CRS by Office of Legislative Affairs, Administration for Children and Families, Office of Refugee Resettlement, U.S. Department of Health and Human Services, March 20, 2015.

<sup>21</sup> See Muzaffar Chishti and Faye Hipsman, "Dramatic Surge in the Arrival of Unaccompanied Children Has Deep Roots and No Simple Solutions," *Migration Information Source*, June 13, 2014; "Under-age and on the move: A wave of unaccompanied children swamps the debate over immigration," *The Economist*, June 28, 2014; U.N. High Commissioner for Refugees (UNHCR), *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection*, March 12, 2014 (hereinafter, UNHCR, *Children on the Run*).

(1,254,501), Guatemala (880,869), and Honduras (535,725) ranked, respectively, as the 6<sup>th</sup>, 10<sup>th</sup>, and 16<sup>th</sup> largest foreign-born groups living in the United States.<sup>22</sup> U.N. survey data indicate that sizable percentages of children residing in El Salvador, Guatemala, and Honduras, have at least one parent living in the United States.<sup>23</sup> If similar data were available on other U.S.-based relatives, such as siblings or extended relatives, these percentages would be higher.

Sizable proportions of these family members in the United States are estimated to be unauthorized aliens.<sup>24</sup> According to 2012 DHS estimates, unauthorized Salvadorans, Guatemalans, and Hondurans living in the United States numbered 690,000, 560,000, and 360,000, respectively, representing 55%, 64%, and 67% of all foreign-born residents from those three countries living in the United States.<sup>25</sup>

### Options for Immigration Relief

The Immigration and Nationality Act provides for immigration relief for foreign nationals (and in some cases classes of foreign nationals) for a variety of reasons. For unaccompanied alien children, such relief include special immigrant status for juveniles (SIJ),<sup>26</sup> relief for trafficking victims (T nonimmigrant status), and asylum.<sup>27</sup> An in-depth analysis of SIJ status and T nonimmigrant status are beyond the scope of this testimony, however, in FY2014, ORR reported that up to 208 UAC in its custody may have received SIJ status.<sup>28</sup> With respect to T nonimmigrant visas, immigration judges generally issue a relatively small number of them overall.<sup>29</sup>

### UAC Granted Asylum<sup>30</sup>

The TVPRA of 2008 revised the procedures and policies for those unaccompanied children who file for asylum, most notably requiring that unaccompanied children from contiguous countries (i.e., Canada and Mexico) be screened for possible asylum claims. DHS subsequently opted to screen all unaccompanied children for possible asylum claims.

<sup>22</sup> Other Central American countries ranked considerably lower: Nicaraguans were 31<sup>st</sup>, Panamanians were 55<sup>th</sup>, Costa Ricans were 67<sup>th</sup>, and Belizeans were 86<sup>th</sup>. Mexicans represent the largest foreign-born population residing in the United States. For El Salvador, the population residing in the United States is one fifth the size of population living in El Salvador (6.3 million). Source: 2012 American Community Survey (ACS) Public Use Micro Sample (PUMS).

<sup>23</sup> The figure is 49% for El Salvador, 27% for Guatemala and 47% for Honduras. By comparison, the figure for Mexico is 22%. UNHCR, *Children on the Run*.

<sup>24</sup> As a policy, ORR does not inquire as to the legal status of the family member sponsoring the unaccompanied child.

<sup>25</sup> Bryan Baker and Nancy Rytina, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012*, Department of Homeland Security, Office of Immigration Statistics, March 2013. For comparison, the unauthorized proportion of the total foreign-born population for Mexico is 58%. For more on the demography of legal status among the foreign-born, see CRS Report R41592, *The U.S. Foreign-Born Population: Trends and Selected Characteristics*, by William A. Kandel.

<sup>26</sup> The provision was initially aimed at children of unauthorized aliens who had been abused, neglected or abandoned. For USCIS legal guidance on SIJ status, see Letter from Donald Neufeld, Acting Associate Director, Domestic Operations, and Pearl Chang, Acting Chief, Office of Policy, to USCIS Field Leadership, March 9, 2009.

<sup>27</sup> Another possible form of relief, Temporary Protected Status (TPS), is not discussed in this testimony because it currently does not apply to unaccompanied children arriving from the northern triangle. For information on TPS, see CRS Report RS20844, *Temporary Protected Status: Current Immigration Policy and Issues*, by Ruth Ellen Wasem and Karma Ester.

<sup>28</sup> Data received from HHS-ORR Legislative Affairs, September 2, 2014 and March 16, 2015. The figures do not include unaccompanied children who received SIJ status through state social welfare agencies.

<sup>29</sup> In FY2013, there were 856 T nonimmigrant visas issued, however, the number of UAC among these is unknown.

<sup>30</sup> All statistics, unless otherwise noted, in this paper are taken from the USCIS Asylum Division's case management system, Refugees, Asylum, and Parole System (RAPS). Some statistics are taken from summary annual reports and other statistics are taken from more specific agency data requests.



USCIS is responsible for the initial adjudication of asylum applications filed by UAC.<sup>31</sup>

For the first three quarters of FY2014, USCIS reported it had received 1,532 asylum petitions. During the same period, USCIS adjudicated 167 cases and granted asylum to 108 unaccompanied alien children.<sup>32</sup> Two of these approved cases were for unaccompanied children apprehended in FY2014. All other approved cases were for unaccompanied children apprehended in prior years.<sup>33</sup> It is important to note that when a UAC decides to make an asylum claim and when the adjudication of such application occurs may not all take place in the same year. Hence the asylum data described above are not necessarily comparable.

Unlike adult asylum seekers, UAC may, after being denied asylum following a USCIS asylum hearing, request asylum again before an EOIR immigration judge during removal proceedings. Data presented below in “**Hearing Outcomes**” suggest that immigration judges approve few UAC asylum requests.

### **Removal hearings**

DOJ’s Executive Office for Immigration Review (EOIR) is responsible for adjudicating immigration cases, including removal proceedings. EOIR has specific policies for conducting UAC removal hearings to ensure that UAC understand the nature of the proceedings, can effectively present evidence about their cases, and have appropriate assistance.

### **Waiting Period for Hearing**

As of March 2014, the average wait time nationwide for all immigration hearings was 19 months.<sup>34</sup> However, this figure is an average for all immigration courts, and comprises a range of periods, some of which extend far beyond 19 months. The length of time until an immigration judge renders a final decision varies widely depending on appeals, adjournments, and other case circumstances. Surges in caseloads, such as that caused by the recent influx of unaccompanied children, tax the limited resources of the immigration court system, further extending wait times for removal hearings.<sup>35</sup>

In addition, children in detention (on the *detained* docket) receive priority for a removal hearing over those on the *undetained* docket. Because most UAC fall in the undetained docket, the average time for UAC could be longer than 19 months.

### **Percentage of UAC Waiting for a Hearing**

Prior to FY2014, EOIR did not track UAC separately from other juveniles, making it difficult to determine their removal hearing outcomes. However, on July 18, 2014, EOIR initiated a new case recording system that coincided with its announcement of revised adjudication priorities in response to

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<sup>31</sup> For information on UAC asylum policy, see CRS Report R43664, *Asylum Policies for Unaccompanied Children Compared with Expedited Removal Policies for Unauthorized Adults: In Brief*, by Ruth Ellen Wasem.

<sup>32</sup> Asylum data provided by USCIS Office of Legislative Affairs, July 2014.

<sup>33</sup> *Ibid.*

<sup>34</sup> Figures are based upon an analysis by the Transactional Records Access Clearinghouse (TRAC) of data obtained from the U.S. Department of Justice’s Executive Office for Immigration Review (EOIR) for all immigration cases, not just those involving unaccompanied children. See TRAC Immigration data, [http://trac.syr.edu/phptools/immigration/court\\_backlog](http://trac.syr.edu/phptools/immigration/court_backlog), accessed June 2014. The figure as of January 2015 is 19.8 months.

<sup>35</sup> The length of time unaccompanied children can expect to wait until their removal hearing may play a role in their migration to the United States by fostering a perception among foreign nationals that an opportunity exists to exploit this administrative backlog. See CRS Report R43628, *Unaccompanied Alien Children: Potential Factors Contributing to Recent Immigration*, coordinated by William A. Kandel.

the UAC surge.<sup>36</sup> As of this writing, data from this system were available for seven months, from July 18, 2014 through February 24, 2015.<sup>37</sup> The following figures reflect this seven-month period that spans FY2014 and FY2015.

During the seven months described, 25,091 UAC were given a *Notice to Appear* (NTA) by DHS following their apprehension.<sup>38</sup> Upon the issuance of an NTA, DHS also notifies EOIR, which, as of February 24, 2015, had arranged for 23,760 UAC (95%) to appear for their first master calendar hearing.<sup>39</sup> Of those scheduled, 15,633 UAC were adjourned (typically postponed to allow UAC to obtain legal counsel or for other reasons) and 1,453 had changes of venues or transfers.

### Hearing Outcomes

For 6,090 cases, immigration judges rendered a decision.<sup>40</sup> In 4,265 (70%) of the cases decided, the UAC were ordered removed. According to EOIR, the remaining 1,825 cases were resolved as follows: administrative closings and completions<sup>41</sup> (1,199); terminations<sup>42</sup> (372); voluntary departure (246); other (7);<sup>43</sup> and immigration relief granted (1).<sup>44</sup> CRS does not know what form of immigration relief was granted for the single individual who received it.

### Percentage of UAC Present at Hearing

<sup>36</sup> The four priority categories are: unaccompanied child, adults with a child or children detained, adults with a child or children released on alternatives to detention, and recent border crossers detained by DHS. See Statement of Juan P. Osuna, Director of Executive Office of Immigration Review, U.S. Department of Justice, *The President's Emergency Supplemental Request for Unaccompanied Children and Related Matters*, hearing by the Senate Committee on Appropriations, 113th Cong., 2nd sess., July 10, 2014.

<sup>37</sup> Executive Office for Immigration Review, Unaccompanied Children Priority Code Adjudication, July 18, 2014 – February 24, 2015, unpublished data provided to CRS, March 17, 2015. All figures presented in this section derive from this source.

<sup>38</sup> A *Notice to Appear* (NTA) is the charging document that signals the initiation of removal proceedings against an individual. It indicates the individual must appear in immigration court on the date specified or at a date to be determined in the future.

<sup>39</sup> EOIR has 21 days from receipt of an NTA from DHS to arrange for the master calendar hearing. The difference between the 25,091 NTAs issued by DHS and the 23,760 master calendar hearings represents the lag period for the most recent NTAs issued by DHS for which EOIR had not yet scheduled a master calendar hearing. A master calendar hearing involves meeting with the unaccompanied minor, the immigration judge, and possibly a legal representative to establish how the case will proceed. Typically, it results in scheduled dates for the submission of documentation and for a formal removal hearing when the immigration judge is expected to render a final decision.

<sup>40</sup> There are 584 cases missing from the 23,760 that are not accounted for by adjournments, transfers, and decisions. According to EOIR, at the time the data provided to CRS were compiled, the 584 cases had their hearing scheduled, but the results had not yet been entered into the database. Phone conversation with EOIR legislative affairs, March 19, 2015.

<sup>41</sup> An administrative closing refers to a temporary removal of a case from an immigration judge's calendar or from the BIA docket. If DHS chooses to pursue the case, the case may ultimately be placed back on the judge's calendar or on the BIA docket.

<sup>42</sup> A case termination refers to a decision by an immigration judge to dismiss the case related to a particular charging document. The charging document for UAC is the Notice to Appear. If a case is terminated in this situation, the child is not subject to removal related to the dismissed charging document. If DHS chooses to pursue the case, it must issue a new charging document.

<sup>43</sup> According to EOIR, the "Other" category refers to "administrative closure for reasons other than prosecutorial discretion, by joint motion or otherwise in accordance with applicable precedent decisions of the Board of Immigration Appeals (BIA)." An example could include a change of venue at a more advanced stage of the case.

<sup>44</sup> "Immigration relief" refers to adjudication outcomes that grant a foreign national to remain legally in the United States. In the case of UAC, the most common forms of immigration relief include special immigrant juvenile status, T-nonimmigrant status, and asylum.

Of the 6,090 cases in which decisions were rendered by immigration judges during this period, 3,775 (62%) were rendered *in absentia*, meaning that the UAC had not shown up to the hearing.<sup>45</sup> All decisions rendered *in absentia* were removals.

### ICE Returns

ICE is responsible for the physical removal of all foreign nationals, including UAC, who have final orders of removal or who have elected voluntary departure while in removal proceedings.<sup>46</sup> To safeguard the welfare of all UAC, ICE has established specific policies for repatriating UAC.<sup>47</sup>

Effecting a final order of removal requires the U.S. government to secure travel documents from the country in question for the alien being removed.<sup>48</sup> Obtaining travel documents can sometimes become problematic because countries may change their documentary requirements or raise objections to the juvenile's return.<sup>49</sup>

Once the foreign country has issued travel documents, ICE arranges transport of the UAC and, if flying, accompanies the UAC on the flight to his/her home country. Mexican UAC are repatriated in accordance with Local Repatriation Agreements (LRA), which require notification of the Mexican Consulate for each UAC repatriated. Additional specific requirements may apply to each LRA.<sup>50</sup>

**Table 3. ICE Removals of UAC by Country of Citizenship, FY2009-FY2014\***

|                | Mexico | Guatemala | El Salvador | Honduras | All Other | Total |
|----------------|--------|-----------|-------------|----------|-----------|-------|
| <b>FY2009</b>  | 350    | 534       | 96          | 352      | 29        | 1,361 |
| <b>FY2010</b>  | 690    | 520       | 117         | 326      | 37        | 1,690 |
| <b>FY2011</b>  | 696    | 515       | 136         | 297      | 51        | 1,695 |
| <b>FY2012</b>  | 574    | 626       | 136         | 430      | 43        | 1,809 |
| <b>FY2013</b>  | 548    | 661       | 159         | 461      | 39        | 1,868 |
| <b>FY2014*</b> | 335    | 554       | 146         | 392      | 30        | 1,457 |

**Source:** Data provided to CRS from ICE Legislative Affairs on October 20, 2014.

**Notes:** \* FY2014 Removal data are through 07/19/2014, representing 9.5 months of FY2014. Removal counts are based on designation of UAC at time of initial book-in and may not be under the age of 18 at the time of removal. ICE data include voluntary departures in their removal.

ICE data presented in **Table 4** indicate that the number of UAC removals by that agency has remained between 1,500 and 2,000 each year between FY2009 and FY2013. CRS was unable to obtain an updated figure for FY2014 as of this writing; that shown in **Table 4** represents ICE removals of UAC for the first 9.5 months of FY2014.

<sup>45</sup> If a UAC does not appear at the removal hearing, he or she is automatically removed, providing that the following two conditions are met: 1) DHS establishes removability to the satisfaction of an immigration judge, and 2) DHS demonstrates that it properly served the *Notice of Hearing* (indicating the specific details of the hearing).

<sup>46</sup> A UAC may elect to depart voluntarily at any point during his or her removal proceedings.

<sup>47</sup> Email from ICE Congressional Relations, May 16, 2014.

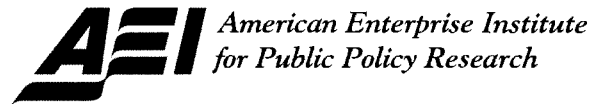
<sup>48</sup> Conversation with Doug Henkel, Associate Director, ICE Removal and Management Division, February 20, 2012.

<sup>49</sup> Olga Byrne and Elise Miller, *The Flow of Unaccompanied Children Through the Immigration System*, Vera Institute of Justice, Washington, DC, March 2012, p. 27.

<sup>50</sup> Ibid.

**Returns at the border**

CRS was not able to obtain data on the number of UAC who were returned to Mexico from CBP.



Statement before the Committee on Homeland Security and Governmental Affairs  
United States Senate

## “Securing the Border: Understanding and Addressing the Root Causes of Central American Migration to the United States”

Ambassador Roger F. Noriega

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American Enterprise Institute

March 25, 2015

*The views expressed in this testimony are those of the author alone and do not necessarily represent those of the  
American Enterprise Institute.*

**Testimony of Ambassador Roger F. Noriega**  
**"Securing the Border: Understanding and Addressing the Root Causes of**  
**Central American Migration to the United States"**

**Committee on Homeland Security and Governmental Affairs**  
**United States Senate**  
**March 25, 2015 2:00 PM**  
**SD-342, Dirksen Senate Office Building**

Mr. Chairman, I commend you and your Committee for organizing a series of hearings this week to focus attention on the fundamental responsibility of securing our borders. I also would like to begin my testimony by recognizing the service of the U.S. government officials who testify before you today. I know from experience that their jobs are critical to our security, and I thank them for their service to our nation.

No event in recent years has underscored the vulnerability of the United States' southwest border as dramatically as the wave of illegal immigrants—many of them children—crossing our border in a five-month period beginning last March. Overall in FY 2014, 51,000 "unaccompanied alien children" (UACs) were detained by or surrendered to U.S. authorities after entering U.S. territory illegally. In addition to being two-and-a-half times the number during the prior year, 75 percent of these UACs are citizens of El Salvador, Guatemala, and Honduras<sup>1</sup>—a dramatic change from past years, when 80 percent were of Mexican origin.

This heart-wrenching flood of humanity demonstrated how quickly our resources on the border can be overwhelmed, creating a diversion of resources that could allow greater threats to evade detection. Moreover, it underscored the real-world consequences of our government sending mixed signals about border enforcement and a potential amnesty at the same time that it fails to engage effectively with neighbors that are facing rising insecurity and instability.

**Principal Observations**

Mr. Chairman, I have worked on these issues—including the very dramatic challenge of confronting mass migration flows from Cuba and Haiti—for decades. I rely on that experience in assessing the root causes of the 2014 border crisis and making some recommendations for addressing those factors to prevent a repeat of this phenomenon.

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- *The surge of unaccompanied alien children from Central America's Northern Triangle actually began in FY 2012*, when CBP recorded the apprehension of 10,146 UACs from those three countries, compared to an average of 3,900 in each of the three prior fiscal years (see table below). Indeed, the annual total of UACs recorded in FY 2014 was five times the number recorded in FY 2012 and twelve times higher than FY 2011.
- This rising tide of illegal crossings from Central America's Northern Triangle (consisting of El Salvador, Guatemala, and Honduras) stemmed from the "pull factors" of perceived permissive U.S. border enforcement; an anticipated "amnesty;" economic opportunity; and family reunification, as well as the "push factors" of crime and violence; instability; sophisticated smuggling networks; and chronic poverty.
- U.S. authorities must address all of these factors simultaneously and in concert with our neighbors in order to discourage a dangerous and costly influx of illegal immigrants.
- Since last year, the U.S. and other governments have taken steps and adopted programs with the goal of discouraging illegal crossings. However, the persistent "push factors" continue, and continued signals of lax enforcement or expectations of a broad "amnesty" can easily overwhelm those efforts.
- The Customs and Border Patrol (CBP) reports a *42 percent decline* in the number of UAC apprehensions so far this Fiscal Year (through February) compared to the same months in FY 2014. However, it is important to note that last year's apprehensions were twice as high as the first two quarters of FY 2012 and FY 2013. Although the UAC line may be trending downward, it remains high above where it was just two years ago. Moreover, the real spike in the numbers last year did not begin until March with the onset of milder weather. So, we will not be able to measure the effectiveness of current efforts to discourage UAC crossings until the end of the summer.
- To stay ahead of this problem, Congress and enforcement agencies should work together to ensure the clarity of U.S. law and to optimize border enforcement to discourage disorderly, illegal crossings.
- Governments of the Northern Triangle countries—El Salvador, Honduras, and Guatemala—and the Obama administration are seeking \$1 billion in FY 2016 aimed at treating the root causes that spur mass emigration. The Administration's efforts, led by Vice President Joseph Biden, appear to be serious and comprehensive. However, this effort will only succeed if Central Americans contribute substantial resources to this common effort and if the U.S. assistance is conditioned strictly on meeting specific benchmarks and accompanied with the accountability that will change the environment of corruption and impunity.
- Ours is a shared responsibility, because much of the violence and criminality destabilizing those countries are the direct result of the illicit drug trade fueled by U.S. demand for cocaine, heroin, marijuana, and other substances. The corruption and violence sown by transnational criminal organizations and affiliated street gangs have overwhelmed the relatively weak institutions of government in Central America and raised the obstacles to economic growth.

**UNACCOMPANIED ALIEN CHILDREN ENCOUNTERED BY FISCAL YEAR**

Fiscal Years 2009-2014; FY 2015 to date (October 1, 2014 - February 28, 2015)

| Country       | FY 2009      | FY 2010      | FY 2011      | FY 2012       | FY 2013       | FY 2014       | FY 2015      |
|---------------|--------------|--------------|--------------|---------------|---------------|---------------|--------------|
| El Salvador   | 1,221        | 1,910        | 1,394        | 3,314         | 5,990         | 16,404        | 2,209        |
| Guatemala     | 1,115        | 1,517        | 1,565        | 3,835         | 8,068         | 17,057        | 4,381        |
| Honduras      | 968          | 1,017        | 974          | 2,997         | 6,747         | 18,244        | 1,181        |
| <b>Totals</b> | <b>3,304</b> | <b>4,444</b> | <b>3,933</b> | <b>10,146</b> | <b>20,805</b> | <b>51,705</b> | <b>7,771</b> |

Source: Customs and Border Protection, U.S. Department of Homeland Security

**The 2014 'UAC' Crisis on the Southwest Border and Urgent Response**

The numbers UACs swelled to 51,705 in FY 2014, with a flood of illegal crossings that began in March and peaked in May and June of last year.

Anecdotal information, interviews with detainees, and a study by the U.S. Government Accountability Office (GAO) released last month point to a variety of factors contributing the surge.<sup>2</sup> Representatives of the Department of State, U.S. Agency for International Development, and Department of Homeland Security stationed in El Salvador, Guatemala, and Honduras briefed the GAO on a host of motivations for people choosing to migrate illegally to the United States. "Crime and violence and economic concerns, poor education, family reunification, and smuggling networks" were among the causes commonly cited, according to the GAO report. The weak rule of law, gang activity, and violence undermined investment, economic growth, and job creation.

Although I believe that chronic poverty motivates most of these illegal crossing into the United States, widespread human rights concerns—particularly the threats of gang recruitment and retribution—are undeniable. After studying this matter for many months, I accept the proposition of human rights advocates who say that a growing number of the UACs arriving in recent years are making *bona fide* asylum claims, which should be adjudicated accordingly.

The conditions of a long trek from Central America, through Mexico, to reach the U.S. border is dangerous, resulting in injury, mistreatment, sexual abuse, robbery, assault, and death. My experience convinces me that it is imperative from a humanitarian standpoint to discourage such risky journeys through strict enforcement of U.S. law and regular voluntary deportation of detainees. Such expedited removal undercuts the "business model" of human smugglers who are exploiting a misperception of U.S. law to abet their criminal activities.

After the influx of unaccompanied minors garnered substantial U.S. and international media attention and sparked a political debate in the United States, the three Central American governments whose citizens were crossing in unprecedented numbers



took the matter seriously and accepted their responsibility for dealing with this humanitarian crisis. In cooperation with the United States and on their own, they adopted public campaigns to warn against attempting the illegal crossing, provided material assistance programs to returning migrants, and supported efforts to punish smugglers.

The U.S. embassies insisted on such a response from their respective countries and, according to the GAO report, adopted measures to discourage and suppress illegal crossings. For example, in El Salvador, U.S. agencies helped bolster border inspection programs. In Honduras, the embassy supported training for prosecutors and judges in a bid to crackdown on smuggling networks. In Guatemala, the aid program addressed the coffee rust problem that may have displaced rural workers. Throughout the subregion, the United States has supported public communications campaigns to warn against illegal emigration and assisted in the repatriation and reception of returned migrants. Existing aid programs also were modified to respond to the UAC phenomenon.

Of course, along with the urgent responsibility to secure the border, the United States must abide by its laws and international obligations with regard to valid claims for political asylum. However, thousands of individuals crossing illegally to claim asylum presents a unique challenge to U.S. authorities, because of the time required to process cases. Although the vast majority of such claims are ultimately denied, the immigrant reaches the United States and, in many cases, fails to appear for the scheduled asylum hearing. This process is open to widespread abuse by people gaming our laws.

For this reason, U.S. authorities have taken steps to accommodate applications and *in-country* processing for “refugee” status. Last November, the Administration initiated a program that will allow a parent who is in the United States lawfully to petition for refugee status for their minor child or children.<sup>3</sup> Applicants must submit to tests to confirm their biological relationship. Applicants are screened in-country, under the auspices of the UN’s International Organization for Migration. The DHS will make individual determinations of admissibility and eligibility for refugee status based on “a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.” Children found ineligible for refugee status under U.S. law will be considered, on a case-by-case basis, for a parole into the United States for “urgent humanitarian reasons.”

The liberal use of this in-country refugee processing or humanitarian parole could send a signal to potential immigrants of lax enforcement. However, the primary message is that the United States is offering lawful and relatively convenient alternatives to the dangerous and illegal trek for families seeking reunification with minor children. According to a published report early this month, thus far about 200 persons, the vast majority of them Salvadorans, had taken advantage of this new program for in-country processing, which is an inconsequential number considering the nearly 52,000 UACs that were encountered in the last fiscal year.<sup>4</sup>

**‘Pull Factors’: Perceived lax enforcement of U.S. law and family reunification**

The GAO study also cites as contributing to last year’s surge “more aggressive and misleading marketing” by alien smugglers, commonly referred to as “coyotes.” My sources in several Central American countries cited brazen radio advertising campaigns by the “coyotes” explaining that a “*permiso*” would be issued to minors reaching U.S. territory, allowing them to remain in the country. These local sources also cite a common misperception—perhaps encouraged by the smugglers—that President Obama was pushing Congress to adopt a broad amnesty to persons living illegally in the United States and that anyone in U.S. territory could potentially benefit from such an initiative.

The June 2012 decision by President Obama to defer removal action of “childhood arrivals”<sup>5</sup> and the increased number of persons being allowed to stay pending hearings under the Trafficking Victims Protection Act of 2008 appear to have contributed to the impression of a more permissive treatment of illegal crossers.<sup>6</sup>

“Coyotes credit President Obama for giving them a new ‘business model’ that allows them to transport unaccompanied minors to the U.S. border with Mexico, then safely turn around and pocket big profits,” journalist Richard Pollock reported last August.<sup>7</sup> Based on interviews with a smuggler as well as dozens of current and former Guatemalan officials, Pollock describes a network of 5,000 smugglers and recruiters who transport thousands of illegal immigrants to the United States each year. A smuggler told Pollock that Mexican and Guatemalan officials—including police at all levels, prosecutors, and immigration officials—cooperate with his activities.

“Coyotes may appear to be uninformed and unsophisticated smugglers, but ... they pay close attention to U.S. immigration laws,” Pollock wrote. He quoted one smuggler as saying, “Obama has helped us with the children because they’re able to stay in the United States. *That’s the reason so many children are coming.*” [Emphasis added]

Family reunification is often cited as a reason for the illegal crossings. Indeed, anecdotal evidence suggests that, in many cases, the smuggling fees are paid by family members who already are in the United States. Certainly, members of this immigrant community in this country are acutely aware of the debate over immigration laws, the possibility of an amnesty, and presidential decisions regarding minor children.

**‘Push Factors’: An Intensifying Cycle of Instability, Insecurity, and Poverty**

The criminal threat that Central America is confronting today is every bit as dangerous to its peace and security as the Soviet- and Cuba-sponsored subversion of the 1970s and 1980s. The region is now considered the most violent non-war-zone in the world. According to the United Nations Office on Drugs and Crime, Central America has a rate more than four times the global average homicide rate, making it a subregion with one of the highest homicide rates on record.<sup>8</sup> Reported incidents of robberies, extortion, kidnappings, and human trafficking are all up in recent years. As a result, poll after poll invariably finds the greatest concern among the people of the region is personal security.<sup>9</sup>

The increased crime and violence also has exacted a heavy economic cost. A UN Development Program report puts the financial costs of violence at a 2.5 percent loss of gross domestic product in Costa Rica, with a loss of more than 10 percent in Honduras.<sup>10</sup> With the International Monetary Fund projecting overall Latin American economic growth at only 1.25 percent this year, the loss of domestic and foreign investment because of security concerns will have a drastic impact.<sup>11</sup> Productivity will be further hurt by the number of citizens who continue to seek refuge in other countries, principally the United States.

Most of the violence in the region can be attributed to the illicit drug trade. Central America finds itself literally caught between two larger countries—Mexico and Colombia—that have conducted their own major crackdowns on transnational criminal organizations, forcing the latter to find more permissive environments to ply their illegal trade. The State Department's latest International Narcotics Control Strategy Report estimates that approximately 86 percent of the cocaine trafficked to the United States in the first half of 2013 first transited the Mexico–Central America corridor.<sup>12</sup> The three countries most responsible for the surge of immigrants attempting to enter the United States—El Salvador, Honduras, and Guatemala—are all designated as major transit countries.

In El Salvador, criminal networks and gangs provide protection for drug shipments, weapons, and human trafficking transiting the country. In Honduras, which has one of the highest homicide rates in the world, an estimated 75 percent of all cocaine-smuggling flights departing South America first land in its territory. In Guatemala, as much as 80 percent of the drugs bound for the U.S. market transit through the country, while Mexican cartels control as much as 40 percent of its territory.<sup>13</sup>

Local governments, plagued by weak institutions and poorly trained law enforcement, have proven no match for these well-financed international criminal organizations, which are aided and abetted by local gangs. As a result of this insecurity and its impact on economic opportunity, the number of Hondurans, Guatemalans, and Salvadorans attempting to cross the U.S. southwest border more than doubled in each of the last two years and may continue to grow.

Another relatively new complication is that some governments in Latin America (such as Venezuela) are either complicit with narcotrafficking and money laundering or (like Bolivia and Ecuador) refuse to cooperate with U.S. counterdrug efforts. Obviously, this defiance has hampered efforts to develop a comprehensive, multilateral response to transnational criminality. Instead, the complicity and safe haven offered to narcotrafficking groups by Venezuela and other countries have bolstered a thriving international criminal network in Latin America into which Central American gangsters have tapped.

The focal point of this transnational criminal conspiracy remains Colombia's *Fuerzas Armadas Revolucionarias de Colombia* (FARC). According to former *Washington Post* investigative journalist Douglas Farah, "FARC, despite engaging in ongoing peace talks with the government of President Juan Manuel Santos, remains at the center of a multitude of criminal enterprises and terrorist activities that stretch from Colombia south to Argentina,

and northward to Central America and into direct ties to the Mexican drug cartels, primarily the Sinaloa organization.”<sup>14</sup> It is estimated that FARC garners between \$500 and \$600 million annually from its illicit activities.<sup>15</sup>

A year ago, Salvador Sánchez Cerén of the *Frente Farabundo Martí para la Liberación Nacional* (FMLN) became president of El Salvador, in part with the support of the street gang *Mara Salvatrucha-13* (MS-13). Sánchez Cerén and his party have a long history of solidarity and support for the FARC. José Luis Merino, another former FMLN guerrilla whose criminal activities were exposed in captured FARC computers, is known as the FARC’s man in El Salvador; he has played a central role in a shadow government managing the flow of Venezuelan assistance to the FMLN through *Alba Petróleos*.<sup>16</sup> Last year, the United States suspended some law enforcement information sharing because then FMLN president Mauricio Funes misused a U.S. government document as a pretext for persecuting a political rival; former president Francisco Flores, known as an ally of U.S. interests, remains detained to date on dubious charges.<sup>17</sup>

The explosion of drug trafficking through Honduras occurred during the presidency of Manuel Zelaya,<sup>18</sup> whose links to drug trafficking are well-established. When Zelaya maneuvered to amend the country’s constitution so he could seek reelection, he was removed from office. Responding to pressure from leftist governments, the Obama administration suspended U.S. anti-drug aid, making the country more vulnerable to drug cartels. Although Zelaya never returned to power—and his wife failed in her bid for the presidency in 2013—his continued political activism from his position in the Honduran congress undermines the country’s fight against criminality.

This threat matrix extends beyond the FARC to include other transnational criminal organizations: the Mexican cartels, Hezbollah, Chinese gangs, the Russian and Italian mafias, to name just a few. All stand to gain from continued instability in Central America.

#### **Addressing the Root Causes: Strengthening the Rule of Law & Citizen Security**

Poverty and insecurity in Central America result primarily from the lack of strong, accountable institutions that can foster economic development and provide for public security. Weak institutions also breed public corruption and lawlessness—which discourage investment and economic growth. Central America’s poorest countries are caught in this vicious, self-destructive cycle. And because corruption even undermines the effectiveness of development assistance, it is impossible for foreign donors to break this cycle unless their local partners—seeing the light or feeling the heat—decide to change their pattern of behavior.

According to Transparency International, Honduras is ranked 126/175 in terms of perceived corruption; Guatemala stands at 115/175; and El Salvador at 80/175. Homicide figures also are devastating. According to official figures from Salvadoran authorities, homicides increased 50 percent in 2014. Honduras’ second largest city, San Pedro Sula, recorded 171 murders per 100,000 inhabitants, making it one of the most dangerous cities outside of a war zone in the world. Honduras currently has a total murder rate of 90.4

homicides per 100,000—the highest in the world. Guatemala stands at 39.9 per 100,000, making it the 6<sup>th</sup> most violent country in the world.<sup>19</sup>

Cutting crime and violence and strengthening the rule of law in Central America will require reform and institution-building—in the criminal justice system, police forces, and prisons. Only with a long-term program of state capacity-building and development will the organized crime be brought under control so that democratically elected authorities can serve the people effectively. The imperative is establishing order, and that means reducing the ability for criminals to challenge and subvert the state. This involves several actions:

- Improving the effectiveness of criminal justice procedures and practices by rooting out corrupt judges and turning around the extremely low conviction rates through more efficient and independent courts.<sup>20</sup>
- Developing the capacity to dismantle the financial networks of criminal organizations by developing effective asset-forfeiture laws and exposing money laundering and also enforcing new campaign finance laws to break up political-criminal conspiracies.
- Reforming the prison systems to deter crime and rehabilitate inmates, rather than having them being used to perpetuate and, in some cases, increase criminal activity from virtual safe havens.
- Promoting the use of extraditions as a deterrent for crime and a means to reinforce national security.

#### **The ‘Alliance for Prosperity’ Proposal and \$1 Billion U.S. Aid Request**

To date, the signature U.S. program in response to the rising violence is the Central America Regional Security Initiative (CARSI). Based on lessons learned—CARSI takes a comprehensive approach to promoting security, including providing equipment, training, and technical assistance to support immediate law enforcement and interdiction operations, as well as strengthening government institutions. Since FY 2008, Congress has appropriated an estimated \$803.6 million for Central America through Mérida/CARSI—and the administration has requested an additional \$130 million for CARSI in FY 2015. Also, the Central American Citizen Security Partnership encompasses all U.S. federal efforts to help combat drug trafficking, gangs, and organized crime. A Group of Friends of Central America donors team works with Central American governments and the Central American Integration System to implement a Central American Security Strategy.<sup>21</sup>

If the recent U.S. border crisis is any indication, these policies to quell instability—which is compelling people to abandon their countries for safety in the United States—have to date proven to be insufficient. What is needed at this point is a fundamental overhaul of the Administration’s approach to Central American security. The problem is not that U.S. agencies are doing something wrong in the region; it is that they are not doing enough. Therefore, more resources are required to expand the effort and to press regional governments to commit to necessary and difficult reforms. Combating violence and

transnational crime requires nationwide sacrifice and a multidimensional strategy—and engagement at the international level.

Under the leadership of Vice President Joseph Biden—and in cooperation with the governments of El Salvador, Guatemala, and Honduras, and the Inter-American Development Bank (IDB)—the Obama Administration has helped develop the “Alliance for Prosperity,” for which it has requested \$1 billion in FY 2016, to address the root causes or “push factors” that contribute to the pressure of illegal emigration on the U.S. southwest border.

The “Alliance” plan appears to me to be a sound appraisal of the root causes of the emigration of Central Americans seeking opportunity and security outside their homeland. For example, a written summary of the plan cites a “constant and growing flow of emigration: about nine percent of the population [of the Northern Triangle countries, El Salvador, Guatemala, and Honduras] has migrated.”<sup>22</sup> Moreover, it contemplates a comprehensive, international strategy for jumpstarting economic development through responsible policies and measurable actions by the state to encourage private sector investment and facilitate robust trade.

Mr. Chairman, this is precisely the sort of plan that we expected the Central Americans to adopt to take full advantage of the free trade agreement that we ratified with these countries 10 years ago.<sup>23</sup> The “Alliance” plan prescribes internal reforms that are intended to do a better job of extending economic opportunity generated by trade and growth to people of all walks of life—with particular attention paid to marginalized youth who were at the heart of last year’s border crisis.

For example, under the rubric of “stimulating the productive sector,” the Plan focuses on promoting and attracting investment in textiles, agro-industry, light manufacturing, and tourism; it also proposes measures to reduce energy costs and to modernize infrastructure and nine specific logistics corridors (e.g. highways, seaports, airports, and railways) to accommodate trade.

To promote “opportunities for people,” the Alliance includes initiatives to create economic, educational, and social opportunities and jobs. The measures will include vocational training, apprenticeships, and internships to integrate youth, women, and returned migrants into the labor force; broadening access to and quality of secondary schools; improving housing and access to clean water and other basic services; and promoting health, nutrition, and early childhood development.

Among programs to improve “public safety and access to the justice system,” the Plan includes anti-violence and anti-street gang programs; counseling centers for at-risk youth; professionalization and properly equipped police forces; and measures to improve the efficiency and impartiality of the judicial system.

In the related area of “strengthening institutions” of the state, the Plan proposes simplifying the tax system and professionalizing public administration; improving the

governments' ability to plan, execute, monitor, and assess the effectiveness of government projects; and enhancing transparency of government "procurement, purchases, and tenders for public works projects...."

In a private meeting in Washington last week, the Foreign Ministers of these countries said that they already are investing their own resources in this integrated development plan, and they welcomed President Obama's proposal that the United States commit \$1 billion to this effort.<sup>24</sup> They also said that they were adopting a feature of the U.S. Millennium Challenge Corporation (MCC) program that includes non-governmental stakeholders in the management and oversight of "Alliance" programs, to make them more transparent, accountable, and inclusive.

It is illuminating that the Central Americans, in their own plan, cite both the security concerns and economic motivations of emigrants, saying that "the level of economic growth ... is insufficient to reduce poverty, create job opportunities, and generate productive activities...." Although the Plan focuses on street gang activities, poor education, and other social problems that endanger at-risk youth, it is primarily focused on multifaceted, long-term plan with the central objective of "developing economic opportunities." In other words, the planners of the three source countries appear to be convinced that the emigration crisis is driven overwhelmingly by economic factors rather than by widespread persecution.

When drafting transformative blueprints such as the "Alliance for Prosperity," the policy architects walk a fine line between the ambitious and the unrealistic. Many of the promised reforms have been advocated for decades, only to have them founder due to a lack of resources, the absence of a national commitment, or the failure of political will from leaders. In this case, we can judge quickly whether the Plan is realistic (and worthy of U.S. support) by whether the Administration is willing to insist on dramatic steps that will test the commitment of our partners.

For example, it is not possible to expect groundbreaking transparency from the state if political leaders—including presidents and former presidents—their families, and cronies are allowed to take unfair advantage of their power for their personal material gain. It is not possible to impose the rule of law and to fight transnational crime if a president's inner circle includes persons involved in money laundering for narcotraffickers and terrorists. It is not possible to dismantle street gangs if the ruling political party employs gangs to mobilize its voters or to terrorize its opponents. It is not possible to attract foreign investment if companies have to deal with insecurity, bureaucracy, and corruption that is tolerated by the state.

In order to deal with the root causes of underdevelopment, corruption, poverty, and insecurity, U.S. diplomats must be empowered to speak and act boldly and U.S. law enforcement must be mobilized to investigate and prosecute corruption and lawlessness, which exact a heavy toll in Central America. Such bold action will encourage our partners in Central America to change their behavior for the good of their own people.

Based on nearly 30 years of assessing such plans, I regard the Alliance for Prosperity Plan to be well-conceived, comprehensive, and extraordinarily ambitious. I believe the President is justified in proposing a \$1 billion investment of U.S. taxpayer money in this effort in FY 2016. I also understand that the Administration intends to work with Congress to channel existing resources to help jumpstart this plan immediately.

However, before the U.S. Congress commits such resources, you are justified in asking the Central Americans to demonstrate how much of their own resources (including multilateral loans) they will invest in these activities; what other international donors (including multilateral organizations) will contribute; and whether these leaders are personally prepared to move boldly to change backward policies and reform corrupt practices that have stunted the growth of their countries for many decades.

It is not clear from the President's budget request that the Administration has identified a serious set of priorities within the Alliance for Prosperity that are worthy of U.S. assistance or whether the U.S. contribution is regarded as a slush fund to be divided equally among the three partners to spend as they choose. (That is certainly what the Central Americans expect, judging from my conversations with them.) If we expect to get meaningful results from a U.S. investment, Congress should work with the Administration to identify specific priorities that will be funded and executed by U.S. agencies. Congress also should ask the President to empower an official in the Executive Branch to coordinate the implementation of these projects, respond to Congressional oversight, and work with each Central American government to ensure that it is pulling its weight and executing programs effectively.

One of the most important factors in determining the success, failure, and sustainability of this type of "transformative" aid program is for Senators and Representatives to become directly involved in the effort and to work as a team with our government and those in the region.

### **Conclusion**

Mr. Chairman. It is not the responsibility of the United States to solve all of Central America's problems. However, when a symptom of those problems literally presents itself on our doorstep, we must respond in a way that secures our border, supports our partners, and addresses the root causes of instability.

Because of the devastating impact of U.S. demand for illicit drugs on our Latin American neighbors, we have an inescapable responsibility to help our partners address these problems. In that respect, our free trade agreement with these countries is the existing foundation for continued cooperation. And a well-executed aid program can have a lasting positive impact.

I know from personal experience that this country has been trying for decades to help Central America build stronger institutions and more just societies. More often than not, the missing ingredient has been the commitment of the people in power to denounce



and ferret out corruption and structural inefficiencies. Although I am generally sympathetic to proposed aid programs, I believe they must be used to leverage transformative change from Central American politicians so that their nations' children do not have to abandon their homes and wander in the desert in search of a future.

## Notes

<sup>1</sup> From website of U.S. Customs and Border Protection, Department of Homeland Security, table entitled, "Unaccompanied Alien Children Encountered by Fiscal Year, Fiscal Years 2009-2014; Fiscal Year 2015 to date (October 1, 2014 - February 8, 2015))" <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>

<sup>2</sup> "Information on Migration of Unaccompanied Children from El Salvador, Guatemala, and Honduras," Report to Congressional Requesters, February 27, 2015, United States Government Accountability Office <http://www.gao.gov/assets/670/668749.pdf>

<sup>3</sup> "Fact Sheet: In-Country Refugee/Parole Program for Minors in El Salvador, Guatemala, and Honduras With Parents Lawfully Present in the United States," Bureau of Population, Refugees, and Migration, U.S. Department of State, November 14, 2014 <http://www.state.gov/j/prm/releases/factsheets/2014/234067.htm>

<sup>4</sup> "EEUU recibe casi 200 solicitudes para dar refugio a niños de Centroamérica," ("US receives almost 200 requests for refuge for Central American children"), *Diario Las Americas*, March 6, 2015.

<sup>5</sup> Remarks by the President on Immigration, June 15, 2012 <https://www.whitehouse.gov/the-press-office/2012/06/15/remarks-president-immigration>

<sup>6</sup> The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 authorizes immigration officials to remove aliens who they determine do not have a valid asylum claim; only if immigration authorities determine that such a valid claim may exist are the aliens entitled to a hearing before a judge. Although many commentators have cited the Wilberforce Trafficking Victims Protection Act of 2008 as requiring judicial hearings for every case involving minors, that legislation dictates the treatment of apparent victims of "trafficking," not every person transported to U.S. territory by smugglers.

<sup>7</sup> "Guatemala's human smuggling network is big business for 'coyotes,'" by Richard Pollock, Washington Examiner, August 21, 2014 <http://www.washingtonexaminer.com/guatemalas-human-smuggling-network-is-big-business-for-coyotes/article/2552267>

<sup>8</sup> Corey Kane, "Honduras, Central America Still Lead the World in Murder Rates," *Tico Times*, April 14, 2014, [www.ticotimes.net/2014/04/14/honduras-central-america-still-lead-the-world-in-murder-rates](http://www.ticotimes.net/2014/04/14/honduras-central-america-still-lead-the-world-in-murder-rates).

<sup>9</sup> "A Broken System," *Economist*, July 12, 2014, [www.economist.com/news/americas/21606864-citizens-security-regions-biggest-problem-time-improve-criminal-justice-broken](http://www.economist.com/news/americas/21606864-citizens-security-regions-biggest-problem-time-improve-criminal-justice-broken).

<sup>10</sup> United Nations Development Program, *Regional Human Development Report 2013–2014, Citizen Security with a Human Face: Evidence and Proposals for Latin America*, November 2013, [www.undp.org/content/dam/rblac/docs/Research%20and%20Publications/IDH/IDH-AL-ExecutiveSummary.pdf](http://www.undp.org/content/dam/rblac/docs/Research%20and%20Publications/IDH/IDH-AL-ExecutiveSummary.pdf).

<sup>11</sup> Kieran Lonergan, "IMF Lowers Latin America Growth Forecast Despite Improved Global Outlook," *BN Americas*, January 22, 2014, [www.bnamericas.com/news/banking/imf-lowers-latin-america-growth-forecast-despite-improved-global-outlook](http://www.bnamericas.com/news/banking/imf-lowers-latin-america-growth-forecast-despite-improved-global-outlook).

<sup>12</sup> United States State Department, Bureau for International Narcotics and Law Enforcement Affairs, *International Narcotics Control Strategy Report*, Volume 1: "Drug and Chemical Control," March 2014, [www.state.gov/documents/organization/222881.pdf](http://www.state.gov/documents/organization/222881.pdf).

<sup>13</sup> *Ibid*

<sup>14</sup> Douglas Farah, "Terrorist Groups in Latin America: The Changing Landscape," testimony before the House Foreign Affairs Subcommittee on Terrorism, Nonproliferation, and Trade, February 2014, <http://docs.house.gov/meetings/FA/FA18/20140204/101702/HHRG-113-FA18-Wstate-FarahD-20140204.pdf>.

<sup>15</sup> Stephanie Hanson, *FARC, ELN: Colombia's Left-Wing Guerrillas*, Council on Foreign Relations, August 19, 2009, <http://www.cfr.org/colombia/farc-eln-colombias-left-wing-guerrillas/p9272>

<sup>16</sup> José Luis Merino, a Marxist guerilla commander turned into a politician, has been responsible for managing *ALBA Petroleos* in El Salvador and laundering money from the company to fund guerillas and narco trafficking in that country.

<sup>17</sup> “EUA no enviara mas informacion confidencial financier a El Salvador,” (“US will not send confidential financial information to El Salvador”), by Gloria Flores, *La Prensa Grafica*, December 5, 2014.

<http://www.laprensagrafica.com/2014/12/05/eua-no-enviara-mas-informacion-confidencial-financiera-a-el-salvador>

<sup>18</sup> Roger F. Noriega and José Javier Lanza, “Honduras under Siege,” AEI *Latin American Outlook*, September 30, 2013, [www.aei.org/outlook/foreign-and-defense-policy/regional/latin-america/honduras-under-siege/](http://www.aei.org/outlook/foreign-and-defense-policy/regional/latin-america/honduras-under-siege/).

<sup>19</sup> Information retrieved from the United Nations Office on Drugs and Crime

<sup>20</sup> Peter J. Meyer and Claire Ribando Seelke, *Central America Regional Security Initiative: Background and Policy Issues for Congress*, Congressional Research Service, May 6, 2014, <http://fas.org/sgp/crs/row/R41731.pdf>.

<sup>21</sup> For more information see Clare Ribando Seelke’s Congressional Research Service Report, *Gangs in Central America*, published on February 20, 2014, <http://fas.org/sgp/crs/row/RL34112.pdf>

<sup>22</sup> The “Plan of the Alliance for Prosperity for Prosperity in the Northern Triangle: A Road Map,” was published in September 2014, at the Inter-American Development Bank in Washington, DC. The subsequent summary of the elements of this plan are based on this document and supporting material.

<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=39224238>

<sup>23</sup> The U.S. free trade agreement with the Central American countries of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua (along with the Dominican Republic), was ratified by the U.S. Senate in June 2005.

<https://ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fla>

<sup>24</sup> I discussed the Alliance for Prosperity with the Foreign Ministers at a private luncheon at the Heritage Foundation in Washington, D.C. on March 17, 2015.

Testimony of  
**Adolfo A. Franco**  
Former Assistant Administrator  
U.S. Agency for International Development

Mr. Chairman,

Thank you for this opportunity to testify before this distinguished Committee. By way of background, I have dedicated most of my professional career to policy matters regarding Latin America and the Caribbean. For fifteen years, I served at the Inter-American Foundation, a U.S. government agency dedicated to promoting private grassroots development in the Western Hemisphere. I also served as Counsel to the House International Relations Committee where my responsibilities included oversight of U.S. government foreign assistance programs in Latin America and the Caribbean. In 2001, President Bush nominated me to serve as Assistant Administrator of the U.S. Agency for International Development (USAID), and I was confirmed by the U.S. Senate in January 2002. In that position, I managed USAID's foreign assistance programs throughout Latin America and the Caribbean through 2007. Over several decades, I have traveled extensively throughout the hemisphere and have met with Latin American presidents, foreign and trade ministers, attorneys general, and private sector leaders in virtually every country. I know the region and its problems all too well.

I want to begin by commending Chairman Johnson for arranging this hearing on a complex and controversial subject that deserves a closer examination and calmer deliberation than it often receives. We cannot hope to reform our immigration laws and stem the tide of illegal immigration unless we understand its causes and the most effective means to end it and secure our borders. At the outset, let me dispel any notion that Americans of Hispanic heritage or descent have views different from those of the vast majority of non-Hispanic Americans when it comes to illegal immigration. Most Latinos, as other Americans, whether Democrat or Republican, favor orderly legal immigration to the United States at levels set by Congress, but are vehemently opposed to executive amnesty for those who have migrated here illegally. As other Americans, Latinos respect the rule of law and understand that a country that loses control of its border loses its sovereignty.

My purpose in testifying today is not to flood you with statistics on what our country has done to promote development and provide humanitarian assistance to Latin America and the Caribbean. I would be happy to provide those details, but Members of this Committee are fully aware of the billions of dollars that the United States generously provides in the Western Hemisphere annually through a variety of channels. In addition to USAID, many other departments and agencies have programs to support democracy, health, justice, environmental, and economic development programs. There is also considerable humanitarian and disaster assistance as well as indirect support that our government provides to the region through development banks and multinational organizations. Suffice it to say, Mr. Chairman, for several decades, the American taxpayer has been extraordinarily generous in helping our neighbors overcome the challenges they have faced.

Unfortunately, after many years of work in this field, I have learned the simple fact that America cannot solve our neighbors' problems nor can we spend our way to development any more than we can spend our way to prosperity at home. The fact is that government cannot create wealth or "develop" under-developed societies. Economic growth can only come from a vibrant private sector. The role of government is to create a free and secure environment that allows the private sector to create wealth. Without a commitment that can be made only by Latin Americans themselves, continuing to pour billions of American taxpayer dollars into these countries will not change this fact and may well make it worse by enabling governments to postpone unpopular reforms.

In that vein, Mr. Chairman, I can assure you that Vice President Biden's recent proposal to provide an additional \$1 billion in development assistance to Central American countries without a prior and demonstrable commitment to meaningful reforms will do nothing but reinforce bad habits and a dependence on foreign aid. Our resources would be more effectively spent on securing our borders and modernizing our immigration procedures in order to send a clear signal that we will enforce our immigration laws. Such an unambiguous message to smugglers and would-be illegal immigrants is a prerequisite to success and more important than anything else we can do in the short term.

Today's hearing is focused on the "pull factors" that have led Latin Americans, principally Mexicans and Central Americans, to immigrate illegally into the United States. At its core, the principal reason has been and continues to be the economic opportunity in our country and the lack of it in theirs. It is clear to anyone who has any knowledge of our decades of our efforts to promote prosperity in the region; foreign assistance has done little to change the plight of the region's poor. This situation has been made even worse by endemic corruption, drug trafficking, violent gangs, and a general lawlessness resulting from ineffective law enforcement that is often linked to criminal activity itself.

Unfortunately, an insecure border compounds the problem by providing opportunities for human smuggling operations that are often linked to gangs in Mexico and Central America. These smuggling operations are a multi-billion dollar business. According to a recent GAO report, 56 percent of the border is not under "operational control" and thus is open territory for the continued growth of these illegal smuggling operations. Rightly or wrongly, the Obama Administration's recent executive actions on immigration have been widely perceived throughout Latin America as an "executive amnesty" that will inevitably result in more illegal immigration and a strengthening of the human smuggling operations carried out by gangs and smuggling rings.

The reality, Mr. Chairman, is that since 2011, the number of illegal immigrants apprehended by the U.S. border patrol has increased by 43 percent from 340,000 to 487,000. But estimates are that at least half of those attempting to illegally enter the U.S. are ultimately successful. The recent increase is largely attributable to children and families, many of whom believe U.S. immigration laws have changed as a consequence of the President's statements and executive actions. In simple terms, the Administration's initiatives and the endorsement of and advocacy for a broad legalization of illegal aliens sends a message that, if only they can get themselves or their children across the border into the United States by any means, they will be able to stay as long as they want and even enjoy the full benefits of citizens and those who have come here legally.

In conclusion, Mr. Chairman, I would urge you and this Committee to consider the following actions that Congress could take to stem the tide of illegal smuggling and immigration:

- Restrict appropriations for the Department of Homeland Security so that no funds can be used to implement executive actions or policy directives that prevent enforcement officers from carrying out their responsibilities under current law and thereby enable large numbers of illegal aliens to avoid deportation and even to receive work permits.
- Prevent illegal employment with a universal E-verify mandate and other measures to boost employer compliance and address identity theft.
- Authorize the U.S. Border Patrol to keep illegal border crossers in custody in the immediate border region and ensure expedited removal.

By taking the actions I have described, Congress would send a clear signal that the United States is a nation of laws which cannot be simply set aside by President Obama – or for that matter any president – at his own convenience whenever he decides they are obstacles to his own preferences. By Congress reaffirming a commitment to the enforcement of the immigration laws of the United States, smugglers tied to drug cartels will diminish and our neighbors will understand that the rule of law is not only paramount but that there is indeed no “executive amnesty” for those who successfully breach our borders.

Mr. Chairman, I would be happy to answer any questions that you and Members of this Distinguished Committee may have for me.

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**Statement By**

**Eric L. Olson**

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**Committee on Homeland Security and Governmental Affairs  
United States Senate**

**March 25, 2015**

**Securing the Border:  
Understanding and Addressing the Root Causes  
Of Central American Migration to the United States**

Good afternoon, Chairman Johnson, Ranking Member Carper, and Members of the Committee. Thank you for the opportunity to appear before the Committee today on behalf of the Woodrow Wilson Center.

I have just returned from a four-day trip to the Mexico-Guatemala border to assess the state of that border and the situation of Central American migrants. When I appeared before this Committee last year we were in the midst of a major humanitarian crisis with the arrival of nearly 50 thousand unaccompanied Central America children at the United States border; and nearly as many arriving in family units, usually accompanied by a mother.

As I noted at the last hearing, there are numerous factors contributing to the rise in number of child migrants from the Northern Triangle countries of El Salvador, Guatemala, and Honduras. Some of these are historic factors – these are nations that experienced great violence during internal armed conflicts from the late 1970s until the mid-1990s. Several hundred thousand people died during this period, and over a million fled across international borders including to Mexico and the United States. So there is a history of flight from the region that has resulted in an ongoing pull to family reunification. The fact that historic patterns of circular migration have been largely broken as a consequence of stronger enforcement along the U.S.-Mexico border makes the pull of family reunification even greater. Viewed historically, this latest spike is the largest, but by no means the only period of elevated migration from Central America in the last two decades.

We also discussed the serious “push” factors driving migration including extremely high levels of criminal violence and grinding poverty that fed despair and desperation among poor Central Americans, especially youth and children. During 2013, the Northern Triangle Countries were considered the most violent region in the world with three of the top five homicide rates. While things have moderated some – Guatemala and Honduras both demonstrating important improvement in homicide rates- El Salvador saw a significant increase (roughly 30 percent) in 2014, and all three countries remain among the world’s top 10 countries for homicides.

While homicide rates are generally caused by criminal activity, not all homicides are the consequence of international drug trafficking. It’s difficult to disaggregate when it comes to causes, because so few formal investigations are actually carried out, but gang activity, vendettas, extortion, kidnapping, and domestic violence are possibly greater factors in the homicide rate than international drug trafficking.

And criminal activity can also be the consequence of ineffective state institutions. Police and prosecutors are often incapable of, or prevented from carrying out their basic functions. In many cases this is the result of fear or intimidation by criminal networks, but it also results from corruption and penetration of the state by criminal actors - what we refer to as state capture. The absence of the state either in form or function leads to greater impunity which in turns exacerbates a situation of criminality and high violence. In many instances children (and families) in high crime neighborhoods are forced to choose between fleeing their communities, joining criminal networks, or dying. Not surprisingly many decide fleeing is the best option, and with family in the United States, their choice is pretty logical.

Adding to these historic pull and current push factors, is the misperception promoted by traffickers seeking to take advantage of the despair of would-be migrants, that entry into the United States was easy and children in particular would be welcomed. One can see the combination of factors that contributed to last summer’s humanitarian crisis.

Since last summer the number of children turning themselves in at the U.S. border has declined markedly. The reasons are many: it reflects a regular seasonal rhythm as temperatures become dangerously hot or too cold to make the trek across Mexico. It also reflects an aggressive information campaign by the



United States and Central American governments to discourage the risky migration. Finally, it is the result of significant efforts by the Government of Mexico to increase enforcement and vigilance along their southern border region. Detentions are estimated to be up by nearly 25 percent in 2014, and deportations are up as well.

Nevertheless, we cannot be certain the flow of migrants will not return. Initial figures for the months of October 2014- January 2015 suggest arrivals are down significantly when compared to the same period in 2014, but up slightly when compared to 2013. Furthermore, the push factors we discussed last year – high levels of violence; lack of economic opportunity for young people; and ineffective and, at times, null government presence in communities where violence and migration are greatest – continue unabated. According to a report from the three Northern Triangle Countries of El Salvador, Guatemala, and Honduras – 90 percent of the migrants came from the most violent municipalities in the region.

In this context, the risks for the people of Central America and the United States are great. Inaction or continuing along the current path runs the risk of these states being overwhelmed by criminality, losing control not only of the state, but of their banking systems and economies. They could potentially become havens for other criminal actors, and a drag on the region including key partners like Mexico. These are not unavoidable or predestined outcomes, but it requires careful, focused and well-coordinated intervention by the countries themselves and support from the United States.

This is why it is so critical that the Northern Triangle governments devise and implement a plan that will address the underlying causes driving the migration. We know that an expanding U.S. economy attracts more labor – especially from poor underdeveloped regions in the Americas. This is unavoidable. But there is much that can be done to address the factors contributing to migration by reducing violence, increasing opportunities, and rooting out the corruption that has weakened the Central American government's capacity to respond effectively to the threats posed by criminal networks.

The announcement of the Central American "Alliance for Prosperity in the Northern Triangle" is a welcome sign. If implemented fully, the Alliance plan represents an important opportunity for the people of Central America. Furthermore, I believe President Obama's request for new funding is not only warranted, but reflects a plan that is a marked improvement over the former Central America Regional Security Initiative, or CARSII program, and is complementary to what the Central American nations themselves are proposing. It suggests there is convergence in important areas, which suggests that these plans have the possibility of succeeding in ways that others have failed.

#### **What is good about these plans?**

Most significant is that both the President's plan and the Central American Alliance plan recognize that questions of economic develop are deeply intertwined with the violence and instability that afflicts the region. The CARSII plan did not take economic issues into consideration but focused exclusively on security and thus missed a major factor in migration.

Second, both plans recognize the importance of building strong capable institutions and support for the rule of law. Corruption and neglect have for too long eroded the capacity of Central American governments to provide the most basic security to its citizens. Criminal groups have penetrated and captured entire ministries, so the task of building capable and accountable police and justice systems is paramount. Likewise, adherence to the rule of law is also critical to a better economy. Without institutions that promote the rule of law citizens, entrepreneurs, and investors lose faith in government's ability to ensure security and guarantee a level playing field for the private sector.

Finally, I find it particularly promising that the proposed U.S. strategy emphasizes a “placed-based approach” to dealing with crime and violence in Central America. To me, a placed-based approach means two fundamental things. First and foremost, it means that U.S. programs will be specifically targeted to those areas most in need of intervention. While national-level reform efforts are still needed, they often fail to reach the local level where needs are most urgent. Strategies focused on specific urban crisis in cities such as Medellín and Bogotá Colombia, or Monterrey and Ciudad Juárez, Mexico have proven more successful than others.

Second, the placed-based approach will enable the U.S. government to work in a more coordinated, and hopefully with more impact at the community level. As I understand it both the Department of States’ Bureau of International Narcotics and Law Enforcement Affairs and the U.S. Agency for International Development will plan their interventions in a community together and should thus establish common metrics for reducing youth-related homicides in hotspot neighborhoods.. It’s a simple thing really, but it hasn’t happened very often in the past. The year-long study of CARS I led last year found serious problems around inter-agency coordination. In one instance, INL and USAID were promoting two different models of community policing around Tegucigalpa. More importantly, efforts to improve police capacity were not necessarily implemented in neighborhoods where crime prevention programs were being carried out. I am a strong believer in the idea that prevention programs need to be paired with smart community-oriented policing if there is going to be long-term benefits to either. If INL focuses on building local law enforcement capacity and USAID on prevention programs, and both agencies work together in particular hot spots, then the place-based approach has the potential to have major impact in troubled communities.

#### **What are the keys to success?**

Let’s be clear. Plans are just that – plans. They need to be fully and properly implemented if they are going to be effective. As noted, the plans before us now are more promising than what has come before based on a more realistic appraisal of the challenges the countries confront. But the United States has been down this path before, so let’s spend some time thinking about what needs to be in place to ensure there is a modicum of success and we are not wasting the taxpayers money, or worse, contributing to deteriorating landscape of violence and insecurity that is taking the lives of thousands of human beings every year. Let me suggest five areas where we need to be particularly careful and wise as we move forward:

- Define metrics for success and carry out impact evaluations:** Central American authorities have told me they understand that they will not receive a blank check from the United States. They seem to expect there will be conditions on the money they receive. The challenge is to decide on specific metrics for success and then evaluate these programs for impact. Some examples of metrics I think are critical are as follows:
  - Guatemala** should extend the mandate of the United Nations anti-impunity mechanism known as CICIG. This mechanism has contributed enormously to Guatemala’s relative success in capturing and prosecuting major criminal leaders, and building cases against corrupt officials.
  - Honduras** has promised to reform its civilian National Police. The U.S. should request a copy of this plan and monitor its implementation carefully. Purging corrupt police is key but so is prosecuting corruption. Investing in building the investigative capacity of the police, currently almost non-existent is also critical. Reforming the office of the Public Prosecutor is equally important and as far as I know there is no plan for this.
  - El Salvador** must make progress on two fronts. Reform of the prison system has long been promised and received U.S. support, but progress has been slow. El Salvador continues to have the most overcrowded prison system in Central America. It’s a reflection of a broken law

enforcement system based on zero tolerance where people are arrested, but rarely prosecuted. As a result prisons become breeding grounds for criminal activity where adolescents with minor criminal records grow into hardened criminals. This is why reform of El Salvador's justice system is also critical so that pre-trial detention is reduced, and timely and effective adjudication is increased from its current sub-regional rate.

- **Establish mechanisms to monitor progress** in each of the program areas, progress should be carefully monitored and publically reported, and further disbursements condition on demonstrated progress. There already exist models for conditioning disbursements on compliance with set targets. The most commonly mentioned ones are those used by the Millennium Challenge Corporation and the President's Partnership for Growth. The advantage with each of these mechanisms is that they are a product of negotiation with the country. The country agrees to the list of conditions and the method of evaluation so it's not simply an imposition by the United States. This process has worked well in the case of El Salvador and ensured that in the recent political transition prior commitments were largely kept. This could be a particularly valuable tool in the case of Guatemala where Presidential and congressional elections are coming up in September. We would want to ensure that commitments made by the current government are kept by the next. It is my understanding that the countries are considering such an arrangement already, so this should be an achievable measure.
- **Promote adherence to the rule of law.** This may be the most important and most difficult. Neither the United States nor Central America has been particularly successful in dealing with these issues in the past. Rather than focusing solely on the technical issues of rules and laws the Central American governments and the United States need to focus on the adherence part – getting people and institutions to submit to the rule of law. There are too many examples in which anti-corruption laws are passed only to have the political and economic elite of the country ignore them. Honduras saw millions of dollars stolen from its national hospital system by the very people charged with overseeing the system. Overcoming these problems require independent auditing and investigative mechanisms that do not depend on the good will of the President or Congress or wealthy entrepreneurs. This is why the CICIG mechanism has been successful in Guatemala because it has independent authority to investigate corruption.

Increasing transparency in government is a second way to increase adherence to the rule of law by giving citizens the opportunity to monitor their government and increase accountability. Honduras has signed an unprecedented agreement with Transparency International and a local organization (Association for a more Just Society) which gives these organizations access to information about government expenditures in several areas. This is an important step but should be expanded to cover expenditures on security from the Honduran President's special security fund.

- **Empower Civil Society:** Where corruption is elevated and governments are unwilling to make the tough decisions to hold people accountable, the United States should encourage civil society organizations to play that role and open spaces for policy debate with civil society. Civil society organizations can monitor government programs and report on progress. The United States should also do more to encourage and nurture independent investigative journalism. Freedoms of expression and access to information are the essential building blocks of democracy so they must be a priority in U.S. policy. Unfortunately, journalists are too often threatened, sometimes by the government, and there have been too many cases of violence against journalists. Two journalists were killed just days ago in Guatemala and one was seriously injured in the same incident.

Conclusion: There are no easy solutions or shortcuts for dealing with the crime and violence, corruption, and economic distress driving Central American migration. It will require a long-term bipartisan commitment to the region, discipline to stay focused on the framework, and adequate, not unlimited, resources. But the risks of doing nothing or keeping the status quo are too large for Central America, Mexico, and the United States. We have an important opportunity to get things right for a change, and an excellent opportunity before us with these plans, but it requires constant vigilance. Hopefully some of these ideas can help orient the discussion going forward. I look forward to your questions and am anxious to be helpful to the Committee and Congress where I can. Thank you.



*Testimony of*

**Alan D. Bersin**

**Assistant Secretary and Chief Diplomatic Officer**

**U.S. Department of Homeland Security**

*testifying before the*

**United States Senate**

**Homeland Security and Governmental Affairs Committee**

**"Securing the Border: Understanding and Addressing the Root Causes  
of Central American Migration to the United States"**

**Wednesday, March 25, 2015**

**342 Dirksen Senate Office Building  
Washington, DC 20510**

### Introduction

Good afternoon Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee. Thank you for inviting the Department of Homeland Security (DHS) to testify on the root causes of Central American migration to the United States. Secretary Johnson and I appreciate this Committee's interest in this important issue.

### Overview

As part of the President's \$1 billion request the United States effort continues to support Central America via the Central America Regional Security Initiative (CARSI), which is the primary U.S. implementation structure for U.S. citizen security assistance in the region. Through CARSI, partner nations, the State Department and the U.S. Agency for International Development (USAID), DHS, as well as other departments and agencies all work to strengthen institutions to counter the effects of organized crime and uphold the rule of law. However, the wave of unaccompanied children (UC) from Central America crossing the U.S.-Mexico border last summer presented a humanitarian dimension catapulting the United States to an immediate response to the urgent situation. Through foreign assistance to the region, the United States directs its efforts towards improving the security and economic situation in these countries. This includes addressing the causes of the migrant influx and gaining political will from these countries to meet their own political, economic, and security challenges. Through CARSI and other funding initiatives, the United States will continue to expand successful programs that will make short to medium-term sustainable impacts to reduce levels of crime and violence, build the capacity of law enforcement and rule of law institutions, and support prevention programs for youth and in communities at-risk of crime and violence.

In my discussions with government officials in El Salvador, Guatemala, and Honduras, they cite educational and employment concerns, daily threats of violence, the desire for family reunification, and the role of smuggling networks as the central causes for the increase in the number of unaccompanied children who migrated to the United States in 2014 and as part of a trend beginning in 2011.

On February 27, 2015, the U.S. Government Accountability Office (GAO) published a report to congressional requesters on "Central America: Information on Migration of Unaccompanied Children from El Salvador, Guatemala, and Honduras." GAO was asked to review issues related to U.S. assistance to Central America addressing the rapid increase in migration of unaccompanied minors from El Salvador, Guatemala, and Honduras to the U.S. The report identifies U.S. mission-level efforts to (1) identify causes of the rapid increase in migration of unaccompanied children and (2) address the causes identified. Identical to my discussions with senior government representatives in these countries, they identified crime and violence and economic concerns as the causes primarily responsible for the recent rapid increase in migration to the United States by unaccompanied children. Examples of criminal activity that can influence migration include gang activity, drug trafficking, and the growth of criminal organizations; economic drivers include the loss of agricultural jobs and farms due to a coffee rust fungus spreading in Central America. These causes were followed by educational concerns, the desire for family reunification, the role of smuggling networks, and the perception of United States immigration policy, among others. These are challenges the region has long faced but lacked the political will and resources necessary to address.

These issues have strong implications for the national security and economic prosperity of the United States. If economic prospects remain poor and the crime rate remains high, Central

America may remain a source of instability for Mexico and ultimately the United States in the form of illegal migration and even more entrenched organized crime in the Western Hemisphere, including in the United States. To the extent that these problems constitute grounds for asylum or other international humanitarian protections, we expect people to continue to seek that protection from the United States, as we have committed to provide through both treaty and statute.

#### **Unaccompanied Children (UC)**

Over the past few years, there was a substantial increase in the number of unaccompanied children, who are some of the most vulnerable individuals who interact with our immigration system, apprehended at the U.S.-Mexican border. Similar to the way it addresses other security issues, in its response, DHS has utilized a risk-based strategy for border security.

According to U.S. Customs and Border Protection (CBP), the number of UC from any country apprehended at the U.S.-Mexican border climbed from more than 24,000 in fiscal year 2012 to nearly 39,000 in fiscal year 2013, and to nearly 69,000 in fiscal year 2014. Prior to fiscal year 2012, the majority of UC apprehended at the border were Mexican nationals. However, more than half of the UC apprehended at the border in fiscal year 2013, and 75 percent apprehended in fiscal year 2014 were nationals of El Salvador, Guatemala, and Honduras. UC apprehensions for fiscal year 2015 to date have decreased, owing in large part to the response by DHS, as well as our interagency and international partners to prepare for the seasonal increase in UC migrants that normally begins in the winter and increases each spring.

More specifically, during the uptick in the number of UCs arriving at the U.S.-Mexican border, DHS worked closely with the Department of Health and Human Services (HHS), to whom DHS is mandated by law to transfer custody of these children once they are identified as unaccompanied, to resolve issues related to HHS' ability to absorb the increase in UCs. This continues to be an issue that Secretary Johnson follows very closely. These efforts actually build on several years of increased and strengthened coordination between DHS and HHS. DOD also played an important role in providing temporary shelter for UCs and family units at the beginning of the increase in 2014.

On June 2, 2014, President Obama directed Secretary Johnson to establish an interagency Unified Coordination Group to ensure Federal unity of effort in responding to the influx of unaccompanied children across the Southwest border. Among other actions, and in order to achieve the unity of effort required to respond to this situation, Secretary Johnson designated Federal Emergency Management Agency (FEMA) Administrator Craig Fugate as the Federal Coordinating Official to lead and coordinate the Unified Coordination Group across the Executive Branch. In this role, Administrator Fugate led and coordinated Federal response efforts to ensure that Federal agencies were unified in providing relief to the affected children.

I am pleased to report that as a result of the multi-agency effort we undertook the numbers of UCs arriving at our border are well below the numbers we experienced last summer. Given the seasonal pattern of Central American migration to the United States, we remain vigilant to prevent or address any increase in numbers as we approach the summer months. To that end, and consistent with the overall Unity of Effort initiative Secretary Johnson announced in April 2014, DHS has embarked on a common, DHS-wide Southern Border campaign plan. DHS-wide campaign planning and the Department's establishment of three new Joint Task Forces – East, West, and Investigations – will enable a more effective, more efficient, and more unified approach for the range of homeland security and border security efforts across our southern border and approaches.

DHS will continue to ensure the proper care of unaccompanied children when they are temporarily in DHS custody and coordinate closely with HHS, the Departments of State and Defense, the General Services Administration and other agencies, to ensure a coordinated and rapid government-wide response in the short-term and to undertake broader, longer-term reforms to address the root cause behind these recent migration trends. We will also continue to work closely with the governments of Mexico, Guatemala, Honduras, and El Salvador. We must, and we will, address this situation.

One way of helping to provide a safe, legal, and orderly alternative to the dangerous journey that some children are currently taking to the United States to reunite with their parents is the establishment of the Central American Minors (CAM) Refugee/Parole Program. This program was created as part of a broader commitment to working with Central American countries to help create the economic, social, governance and citizen security conditions to address factors contributing to increases in migration to the United States. Vice President Biden announced the establishment of the program in November 2014, and the application period opened on December 1, 2014. The program provides certain qualified minors in El Salvador, Guatemala and Honduras with parents lawfully present in the United States the opportunity to apply for refugee status.

#### **U.S. Department of Homeland Security (DHS) Engagement with Central America**

In February, I traveled to El Salvador, Guatemala, and Honduras with senior CBP and ICE officials for a series of meetings to promote regional security and economic prosperity, to work on approaches to deterring illegal migration, and to ensure that we are prepared for seasonal fluctuation or any other potential should there be another seasonal increase in the number of UC migrating to the United States this year.

Looking forward, DHS will continue to support U.S. government economic and security objectives. DHS will continue to promote information campaigns through radio, television, and print media to dissuade potential undocumented migrants from embarking on the dangerous trek north to attempt to enter the U.S. illegally. These campaigns are essential in combating the misinformation promoted by smuggling organizations. DHS will also continue its excellent bilateral partnerships with our Central American partners to further enhance the quick, efficient, and safe repatriations of children and families who are apprehended in the United States. This includes bilateral cooperation on travel document issuance, the number of permitted repatriation flights, the availability of consular interviews, and infrastructure at reception centers. ICE uses the Criminal History Information Sharing (CHIS) program as a vital international public safety tool that provides participating nations with certain egregious criminal history information in advance of an undocumented migrant's removal from the United States. DHS signed a CHIS agreement with the Government of El Salvador on May 14, 2014, Guatemala on July 9, 2014, and Honduras on August 19, 2014. CHIS data transmissions are operational in all three countries.

To promote investigative capacity-building and anti-smuggling efforts, DHS, with DOS funding, will increase the presence of the Transnational Criminal Investigative Units (TCIU), which are sponsored by ICE in Honduras, Guatemala, El Salvador, and Panama. Comprised of foreign law enforcement personnel, TCIUs facilitate information exchange, rapid bilateral investigation, and ultimately enhance the host country's ability to investigate and prosecute individuals involved in weapons trafficking and counter proliferation; money laundering and bulk cash smuggling; human smuggling and trafficking; narcotics trafficking; intellectual



property rights violations and other customs fraud; child exploitation; cybercrime; and other violations within the ICE investigative purview. DHS also plans to expand border-focused vetted units, such as the Special Tactics Operations Group or *Grupo de Operaciones Especiales Tacticas* (GOET) in Honduras, to El Salvador and Guatemala in partnership with CBP. Through these vetted units, DHS provides training and capacity building to foreign counterparts, empowering them to investigate, identify, disrupt, and dismantle transnational criminal organizations that are engaging in illicit activities in the host country. Partner nation authorities in Central America, including immigration services and border police, collect biometrics in cooperation with ICE's TCIUs and through ICE's Biometric Identification Transnational Migration Alert Program (BITMAP). The host country owns the biometric data and shares the information with ICE for intelligence and screening.

DHS will also support increased passenger and cargo information sharing via programs designed to collect and verify information through U.S. databases, as well as information regarding transnational criminal organization smuggling routes. By pursuing efforts to expand the Joint Security Program (JSP) and Advanced Passenger Information Sharing (APIS) in Central America, DHS will augment the ability of host country law enforcement and migration officials to identify and respond to illicit trade and travel occurring at major transit hubs, primarily at the international commercial airports. Finally, to encourage economic development, DHS will pursue efforts to promote trade, travel and commerce through trade facilitation, port infrastructure assistance, and information sharing.

On my recent trip to Central America, I was impressed and encouraged by the political will demonstrated by each country, which is a critical component to our success. In El Salvador, key law enforcement leaders described the need to build investigative capacity within the national police, with a particular focus on building capacity on the border. In Guatemala, the government has an agreement with the government of Mexico to add eight new border ports of entry along the Mexican border to better facilitate legitimate trade and travel. The Government of Guatemala emphasized the need to go beyond messaging and give Guatemalans a reason to stay. Their government is currently working on efforts to provide economic development for high migration source-regions through the development of training centers to provide technical education for children. In Honduras, senior officials outlined their goal to increase capacity of domestic police units, particularly in investigative capabilities, to crack down on crime and violence. The Government of Honduras also expressed a strong interest in pursuing efforts to improve airport security and migration control. These efforts are but a few examples of how the governments of Central America are taking ownership of these challenges. During the Vice President's trip to Guatemala earlier this month, he also noted the important steps the governments of El Salvador, Guatemala, and Honduras have taken to address the root causes of migration to the United States and the need for them to remain committed to meaningful action.

### **Conclusion**

We appreciate the support Congress has provided to improve security at our borders and ports of entry. With that support, we have made great progress. There are now increased personnel, technology, and infrastructure on our borders, more than ever before. As we work to increase border security, however, we must continue to look beyond our borders. We are actively engaging our international partners to identify and interdict threats at the earliest possible point, before they reach our borders. We are sharing more information with these partners; we are working in a joint capacity to counter transnational criminal organizations, human and drug

smugglers, and those who traffic in persons; and we are building greater security and integrity into our shared systems of trade and travel. We will continue to engage with our foreign and interagency partners to extend our security beyond our borders and address threats as far from the homeland as possible.

As part of our whole-of-government approach, DHS continues to build our risk-based approach to address the challenges present in Central America. Additionally, the governments of El Salvador, Guatemala, and Honduras are taking ownership of these challenges and addressing them head on. One important step was creating a strategic vision through the “Plan of the Alliance for Prosperity in the Northern Triangle: A Road Map,” which was created by the three Central American countries themselves with support from the Inter-American Development Bank (IDB). This plan emphasizes the importance of regional economic integration through stronger transportation, communications, customs, and border linkages.

On my trip to the region last month, I personally saw the desire in each of these countries to do more to address these longstanding issues. As the Vice President stated in his op-ed in *The Hill* on March 10, 2015, “The challenges ahead are formidable. Solving them will take years. But Central America’s leaders have now laid out a shared plan to move their region forward and taken the first steps to make it a reality. Central America can become the next great success story of the Western Hemisphere.”

Thank you for the opportunity to testify today, for your continued support of the Department, and for your attention to this important issue. I would be pleased to answer any questions at this time.

“SECURING THE BORDER: UNDERSTANDING AND ADDRESSING THE  
ROOT CAUSES OF CENTRAL AMERICAN MIGRATION TO THE UNITED  
STATES”

TESTIMONY OF  
FRANCISCO PALMIERI  
DEPUTY ASSISTANT SECRETARY OF STATE  
BUREAU OF WESTERN HEMISPHERE AFFAIRS  
U.S. DEPARTMENT OF STATE  
BEFORE  
THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT  
AFFAIRS  
UNITED STATES SENATE  
MARCH 25, 2015

Mr. Chairman, Ranking Member Carper, and Members of the Committee:

Thank you for the opportunity to testify on the U.S. Strategy for  
Engagement in Central America.

Last summer’s increase in migration of unaccompanied children provided a strong reminder that the security and prosperity of Central America are inextricably linked with our own. We also saw how a combination of U.S. leadership and rising political will in the region can successfully tackle shared challenges. The President marshalled an international response to the humanitarian situation caused by the surge in unaccompanied children and families with children to our Southwest border. It remains imperative that the United States support the leaders of El Salvador, Guatemala, and Honduras to address the region’s security and developmental challenges to avoid an ongoing cyclical migration phenomenon, with significant cost to the United States and tragic consequences for those who suffer at the hands of dangerous criminal smuggling organizations. The stakes are high and our joint efforts demand more than business as usual. The good news is that political will is on the rise in Central America.

Last summer, in partnership with the Mexican and Central American governments, we achieved several important successes. The United States’ public messaging campaigns about the dangers of the journey for children and families, assisted by host country efforts, effectively countered false rumors spread by

smugglers about potential immigration benefits in the United States. The Department of State and DHS have continued to revise and tailor our public messaging to counter any misinformation and warn of the dangers of unlawful migration.

The Department, in coordination with DHS, also launched in-country refugee and parole programs in El Salvador, Guatemala, and Honduras to provide a safe, legal, and orderly alternative to the dangerous journey of unaccompanied children to the United States. Specifically, the program is open to children of parents lawfully in the United States with the following statuses: permanent resident status, temporary protected status, parolee, deferred action, deferred enforced departure, or withholding of removal. As of March 9, we have received 219 applications. We continue to promote this program in U.S. communities with significant populations of people who may have family in El Salvador, Guatemala, and Honduras.

Mexico is also playing an important role in managing migration from the Northern Triangle. The Mexican Government has taken significant steps to provide status for Guatemalan workers who have jobs in the Southern Mexican states. And we note the Mexican government is making real efforts to dismantle human smuggling and trafficking organizations--which victimize many of the poorest and most vulnerable migrants and exploit other vulnerable populations--and to effectively shut down the use of "La Bestia" for migration. In 2014, Mexico apprehended 127,332 migrants, including 10,923 unaccompanied children. We continue to work with Mexico to disrupt the organized networks facilitating human smuggling and to strengthen enforcement in Mexico's southern border region, through which many of these poorest and most vulnerable migrants use on their journey north.

These successes cannot be sustained and built upon, without an increased U.S. commitment. Central American governments also need to do much more, in partnership with the Administration and the Congress.

Over the past two years, the U.S. government took a hard look at both our approach and our investments in Central America. Although security is paramount, and will remain so, we realized that we need to broaden our vision for how we achieve it. We developed an interagency strategy – the U.S. Strategy for Engagement in Central America – that balances three interrelated and interdependent objectives. These objectives are prosperity, governance, and security.

Without significant progress on all of these fronts, Central America will continue to face extreme violence and widespread poverty. These conditions will compel tens of thousands of Central Americans to flee their homes each year. Conversely, a secure, democratic, and prosperous Central America will provide an environment in which its citizens can thrive at home, instead of migrating elsewhere for safety and opportunity.

The President requested \$1 billion for Fiscal Year 2016 to support the U.S. Strategy for Engagement in Central America. Our request maintains and expands our current focus on security, including the investments we have made through the Central America Regional Security Initiative (CARSI), and will also support new investments for prosperity and governance consistent with the Strategy. As Vice President Biden recently said, “The cost of investing now in a Central America where young people can thrive in their own communities pales in comparison to the costs of another generation of violence, poverty, desperation and emigration.” This preventative approach is in U.S. national security interests.

Our prosperity agenda for Central America fosters the integration of a regional market of 43 million people and the creation of an enabling environment that encourages businesses of all sizes to invest and grow. Economic integration is happening throughout the hemisphere and, despite its location at the very crossroads of the hemisphere, Central America risks being left behind. Economic growth should reach everyone, not just the well-connected few. Six million young people will seek to enter the labor force in the next decade. Without job opportunities, these youth may end up participating in the illicit economy or coming to the United States.

Our governance agenda recognizes that economic growth and security are only sustainable when the rule of law and democratic institutions flourish, and when civil society and the media can play their rightful roles. Economic growth and good governance are security issues. Citizens and investors will trust institutions once those institutions establish a pattern of transparency, accountability, and effectiveness. Our governance efforts will address critical fiscal, police, civil service, and judicial reforms. The quality of government institutions will determine the quality of results.

Security is at the heart of our agenda but it cannot be achieved without strengthening our efforts in the areas of governance and economic prosperity. We need to continue to reduce violence in the region through U.S. sponsored programs

that help stabilize neighborhoods and eradicate transnational criminal networks that threaten Central America's communities and our own. We must collectively and effectively address insecurity now to ensure our other important investments bear fruit in the longer term.

U.S.-funded security programs make a difference in the lives of people like 17 year-old Kevin from Ilopango, El Salvador. His brother is in prison for murder; his mother left for the United States when he was six; and, after dropping out of school in the 8th grade, he was heading down one of those two paths. However, when USAID established a youth outreach center in Kevin's neighborhood, Kevin immediately joined the center's sports program. He now runs the center's gym, has completed a computer literacy course, and plans to return to school.

USAID has started over 200 youth centers throughout Central America and both governmental and non-governmental partners are replicating the model with their own resources. USAID is coordinating proven community-based interventions using smart targeting with the Department of State's Bureau of International Narcotics and Law Enforcement Affairs (INL). USAID and INL developed a "place-based and people-centric strategy" that targets communities with the highest homicide rates and those individuals who are most at risk of committing violence. These efforts will multiply exponentially the number of stories like Kevin's.

As I said previously, we believe the essential condition for success is present: political will in the region. The presidents of El Salvador, Guatemala, and Honduras have a plan; they are already making progress and they have publicly committed themselves to a near-term timeline for continued action. The three presidents launched the Alliance for Prosperity plan in November, and are taking steps to implement it. The U.S. Strategy aligns with and supports the goals and objectives of the Alliance for Prosperity.

Since last summer, the Northern Triangle governments have taken important steps. On December 18, El Salvador passed an Investment Stability Law, giving investors assurances that tax and customs regulations will not change over the course of an investment. Indicative of its commitment to resolve long-standing disputes, on October 14, the Guatemalan government reached agreement with 33 communities on reparations for communities where human rights were violated by the construction of the Chixoy dam. And, on October 6, Honduras signed an agreement with Transparency International that includes plans to tackle corruption by making human resources and government procurement information publicly

available. All three governments, as participants in the Open Government Partnership, have also agreed to work with civil society to develop national action plans that will be externally assessed and monitored as they are implemented.

We are calling on Central American governments to do more – to invest their own resources and advance reforms that will lay the groundwork for success. These efforts will enable our assistance to produce better and sustained outcomes in Central America. Vice President Biden traveled to Guatemala earlier this month to meet with the presidents of El Salvador, Guatemala, and Honduras and raised these very points. The leaders released a strong joint statement, which included specific public commitments – with timelines – to guide continued progress. Each of our countries, the United States included, committed to actions that will help the region’s security and developmental challenges. And we did so publicly, inviting scrutiny and accountability.

We are still a long way from achieving our core goals in Central America. There is no clearer indication of this fact than the willingness of tens of thousands of children to travel to the United States last summer – amid the ever-present risks of rape, abuse, and death – to flee dire conditions in their home communities.

Despite these serious and complex challenges, there is reason to be optimistic about Central America’s future. We have a strong plan that we believe addresses the core of the challenges in the region. New demonstrated political will by Northern Triangle leaders to implement their own Alliance for Prosperity Plan is an important step forward. We want to work with Congress to help Central America and strengthen U.S. national security. As Vice President Biden said, “These [Central American] Presidents have committed to reforms and given themselves deadlines to take concrete steps. We agreed on the actions required, like strengthening police and justice reforms – actions to make your government more transparent, increase revenue bases, make your streets safer.” If we join Central American governments who move forward in this way, we will help get Central America on a new trajectory. I believe doing so will help secure America.

I look forward to your questions.

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**WRITTEN STATEMENT OF**  
**LIEUTENANT GENERAL KENNETH E. TOVO, UNITED STATES ARMY,**  
**MILITARY DEPUTY COMMANDER, UNITED STATES SOUTHERN COMMAND**  
**BEFORE THE 114<sup>TH</sup> CONGRESS**  
**COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS**  
**25 MARCH 2015**

**AS SUBMITTED BY**  
**GENERAL JOHN F. KELLY, UNITED STATES MARINE CORPS**  
**COMMANDER, UNITED STATES SOUTHERN COMMAND**  
**BEFORE THE SENATE ARMED SERVICES COMMITTEE**  
**12 MARCH 2015**





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### **Introduction**

Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee: I appreciate the opportunity to appear before you today to discuss U.S. Southern Command's efforts in Central America, South America, and the Caribbean. As I finish my third and likely final year in command, I continue to be impressed by the courage and sacrifice displayed by so many countries in this part of the world. Our friends across the region are committed to winning back their streets, indeed their countries, from criminal gangs and drug traffickers, and doing so while protecting human rights. They are ready and willing to partner with the United States, and they are eager for expanded cooperation and increased learning and training opportunities with the U.S. military. But they are frustrated by what they perceive as the low prioritization of Latin America on our national security and foreign policy agendas, which is especially puzzling given the shared challenge of transnational organized crime.

The drug trade—which is exacerbated by U.S. drug consumption—has wrought devastating consequences in many of our partner nations, degrading their civilian police and justice systems, corrupting their institutions, and contributing to a breakdown in citizen safety. The tentacles of global networks involved in narcotics and arms trafficking, human smuggling, illicit finance, and other types of illegal activity reach across Latin America and the Caribbean and into the United States, yet we continue to underestimate the threat of transnational organized crime at significant and direct risk to our national security and that of our partner nations. Unless confronted by an immediate, visible, or uncomfortable crisis, our nation's tendency is to take the security of the Western Hemisphere for granted. I believe this is a mistake.

Last year, almost half a million migrants<sup>1</sup> from Central America and Mexico—including over 50,000 unaccompanied children (UAC) and families—were apprehended on our border, many fleeing violence, poverty, and the spreading influence of criminal networks and gangs. Assistant Secretary of State Roberta Jacobson testified that the “UAC migration serves as a warning sign that the serious and longstanding challenges in Central America are worsening.”<sup>2</sup> In my opinion, the relative ease with which human smugglers moved tens of thousands of people to our nation’s doorstep also serves as another warning sign: these smuggling routes are a potential vulnerability to our homeland. As I stated last year, terrorist organizations could seek to leverage those same smuggling routes to move operatives with intent to cause grave harm to our citizens or even bring weapons of mass destruction into the United States. Mr. Chairman, Members, addressing the root causes of insecurity and instability is not just in the region’s interests, but ours as well, which is why I support President Obama’s commitment to increase assistance to Central America.

These and other challenges underscore the enduring importance of U.S. Southern Command’s mission to protect our southern approaches. We do not and cannot do this mission alone. Our strong partnerships with the U.S. interagency—especially with the Department of Homeland Security (DHS), the U.S. Coast Guard, the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), and the Departments of Treasury and State—are integral to our efforts to ensure the forward defense of the U.S. homeland. We are also fortunate to have strong, capable partners like Colombia, Chile, Brazil, El Salvador, and Panama, regional

<sup>1</sup> U.S. Customs and Border Patrol, *FY 14 Border Security Report*. According to the CBP, 239,229 migrants from the Northern Tier countries of Guatemala, Honduras, and El Salvador were apprehended in 2014, representing a 68% increase compared to FY 13. 229,178 migrants from Mexico were apprehended, a 14% decrease.

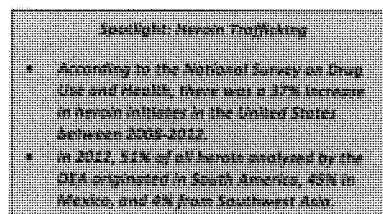
<sup>2</sup> Testimony of Roberta Jacobson, Assistant Secretary of State, Bureau of Western Hemisphere Affairs, Before the Subcommittee on Western Hemisphere Affairs, United States House of Representatives, November 18, 2014.

leaders and outstanding contributors to hemispheric and international security. Given our limited intelligence assets, interagency relationships and bilateral cooperation are critical to identifying and monitoring threats to U.S. national security and regional stability.

Finally, while I thank the Congress for mitigating some of our asset shortfalls in 2015, the specter of sequestration still hovers over everything we do. Its potential return in FY16 would jeopardize our progress; undermine our credibility and the region's trust in our commitments; and present renewed hardships for our civilian and military workforce. I have already taken painful steps to implement a mandated 20% reduction in our headquarters budget and personnel, and we have thus far managed to avoid a reduction in force while still protecting our ability to conduct our most important missions. Nevertheless, as the lowest priority Geographic Combatant Command, 'doing less with less' has a disproportionate effect on our operations, exercises, and engagement activities. Mr. Chairman, Members, the truth is we are managing to keep the pilot light of U.S. military engagement on in the region—but just barely. This presents more than just risks to our national interests; U.S. Southern Command has accepted risk for so long in this region that we now face a near-total lack of awareness of threats and the readiness to respond, should those threats reach crisis levels.

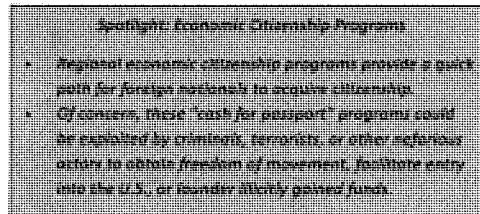
### **Security Environment**

**Transnational Organized Crime.** The spread of criminal organizations continues to tear at the social, economic, and security fabric of our Central American neighbors. Powerful and well-resourced, these groups traffic in drugs—including cocaine, heroin, marijuana, counterfeit pharmaceuticals, and methamphetamine—small arms and



explosives, precursor chemicals, illegally mined gold, counterfeit goods, people, and other contraband. They engage in money laundering, bribery, intimidation, and assassinations. They threaten the very underpinnings of democracy itself: citizen safety, rule of law, and economic prosperity. And they pose a direct threat to the stability of our partners and an insidious risk to the security of our nation.

While there is growing recognition of the danger posed by transnational organized crime, it is often eclipsed by other concerns. Frankly, Mr. Chairman, I believe we are overlooking a significant security threat. Despite the heroic efforts of our law enforcement colleagues, criminal organizations are constantly adapting their methods for trafficking across our borders. While there is not yet any indication that the criminal networks involved in human and drug trafficking are interested in supporting the efforts of terrorist groups, these networks could unwittingly, or even wittingly, facilitate the movement of terrorist operatives or weapons of mass destruction toward our borders, potentially undetected and almost completely unrestricted. In addition to thousands of Central Americans fleeing poverty and violence, foreign nationals from countries like Somalia, Bangladesh, Lebanon, and Pakistan are using the region's human smuggling



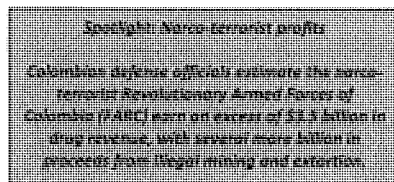
networks to enter the United States.<sup>3</sup>

While many are merely seeking economic opportunity or fleeing war, a small subset could potentially be seeking to do us harm. Last year, ISIS

<sup>3</sup> Texas Department of Public Safety, 2013 Threat Assessment.

adherents posted discussions on social media calling for the infiltration of the U.S. southern border. Thankfully, we have not yet seen evidence of this occurring, but I am deeply concerned that smuggling networks are a vulnerability that terrorists could seek to exploit.

I am also troubled by the financial and operational overlap between criminal and terrorist networks in the region. Although the extent of criminal-terrorist cooperation is unclear, what is clear is that terrorists and militant organizations easily tap into the international illicit marketplace to underwrite their activities and obtain arms and funding to conduct operations.<sup>4</sup> It's easy to see why: illicit trafficking is estimated to be a \$650 billion industry—larger than the GDP of all but 20 countries in the world—and less than 1 percent of global illicit financial flows



is currently being seized or frozen.<sup>5</sup> The terrorist group Lebanese Hezbollah—which has long viewed the region as a potential attack venue against Israeli or other Western targets—has

supporters and sympathizers in Lebanese diaspora communities in Latin America, some of whom are involved in lucrative illicit activities like money laundering and trafficking in counterfeit goods and drugs. These clan-based criminal networks exploit corruption and lax law enforcement in places like the Tri-Border Area of Brazil, Paraguay, and Argentina and the Colon Free Trade Zone in Panama and generate revenue, an unknown amount of which is transferred to Lebanese Hezbollah. Unfortunately, our limited intelligence capabilities make it difficult to fully

<sup>4</sup> According to the Drug Enforcement Administration, twenty-two of the fifty-nine Department of State designated Foreign Terrorist Organizations are linked to the global drug trade.

<sup>5</sup> United Nations Office of Drugs and Crime. *Estimating Illicit Financial Flows Resulting from Drug Trafficking and Other Transnational Crimes*. Geneva, 2011.

assess the amount of terrorist financing generated in Latin America, or understand the scope of possible criminal-terrorist collaboration.

**Iranian Influence and Islamic Extremist Organizations.** Over the last 15 years Iran has periodically sought closer ties with regional governments, albeit with mixed results. Iranian legislators visited Cuba, Ecuador, and Nicaragua to advocate for increased economic and diplomatic cooperation. Iran's outreach is predicated on circumventing sanctions and countering U.S. influence. Additionally, Iran has established more than 80 'cultural centers' in a region with an extremely small Muslim population. The purported purpose of these centers is to improve Iran's image, promote Shi'a Islam, and increase Iran's political influence in the region. As the foremost state sponsor of terrorism, Iran's involvement in the region and these cultural centers is a matter for concern, and its diplomatic, economic, and political engagement is closely monitored.

Sunni extremists, while small in number, are actively involved in the radicalization of converts and other Muslims in the region and also provide financial and logistical support to designated terrorist organizations within and outside Latin America. Partner nation officials throughout the region have expressed concern over the increasing number of suspected Islamic extremists from the hemisphere who are traveling to Syria to participate in jihad. Some take part in military and weapons training before departing; last year 19 Trinidadian Muslims were detained in Venezuela for conducting training with high-powered weapons. When these foreign fighters return, they will possess operational experience, ties to global extremists, and possible intent to harm Western interests—and they will reside in a region rife with smuggling routes that lead directly and easily into the United States.

**Chinese Outreach.** As in other regions around the world, China has growing influence in Latin America and the Caribbean. Since 2005, it has provided financing to the region in excess of \$100 billion.<sup>6</sup> Chinese investment is concentrated in commodities, manufacturing, telecommunications, and construction sectors, including a \$40 billion investment in a Nicaraguan ‘alternative’ to the Panama Canal by a Chinese company.<sup>7</sup> In my view, just as we have ‘pivoted’ to the Pacific, China has pivoted to the Western Hemisphere. It views good relations with the region as useful for two reasons: to gain access to natural resources and to increase its global influence. China continues to increase its cooperation with regional organizations such as the Community of Latin American and Caribbean States (CELAC) and the Caribbean Community (CARICOM), and leverages its position in BRICS<sup>8</sup> to advance its interests regionally. Of note, Beijing recently hosted a two-day China-CELAC Forum to discuss opportunities for increasing bilateral partnerships. Although cultural differences often preclude close cooperation, Chinese engagement with regional militaries is gradually expanding, especially with Cuba and Venezuela. This outreach, while not a threat to U.S. interests at this time, does underscore the importance of continued engagement by the U.S. military to maintain our valued security partnerships.

**Increased Russian Presence.** In contrast, Russian activities in the region are more concerning. Periodically since 2008, Russia has pursued an increased presence in Latin America through propaganda, military arms and equipment sales, counterdrug agreements, and trade. Under President Putin, however, we have seen a clear return to Cold War-tactics. As part of its

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<sup>6</sup> Amos Irwin and Kevin Gallagher. *Chinese Finance to Latin America Tops \$100 Billion Since 2005*. Inter-American Dialogue, April 2, 2014.

<sup>7</sup> R. Evan Ellis. *The Rise of China in the Americas*. Security and Defense Studies Review. Volume 16, 2014.

<sup>8</sup> Brazil, Russia, India, China, and South Africa



global strategy, Russia is using power projection in an attempt to erode U.S. leadership and challenge U.S. influence in the Western Hemisphere. Last year and again this year, a Russian intelligence ship docked in Havana multiple times while conducting operations in the Gulf of Mexico and along the east coast of the United States. Russia has courted Cuba, Venezuela, and Nicaragua to gain access to air bases and ports for resupply of Russian naval assets and strategic bombers operating in the Western Hemisphere. Russian media also announced Russia would begin sending long-range strategic bombers to patrol the Caribbean Sea and Gulf of Mexico, in an effort to “monitor foreign powers’ military activities and maritime communications.”<sup>9</sup> While these actions do not pose an immediate threat, Russia’s activities in the hemisphere are concerning and underscore the importance of remaining engaged with our partners.

**Regional Challenges and Opportunities for U.S. Influence.** The United States also faces challenges from regional bodies like CELAC, which deliberately exclude the United States and seek to limit our role in the hemisphere. Other regional organizations such as the Central America Integration System (SICA), however, offer the United States opportunity for engagement. Just this past year, we hosted SICA leaders and asked the Colombian Minister of Defense to share his perspective on Colombia’s success and lessons learned over the past decades. Additionally, ALBA<sup>10</sup> nations like Venezuela, Ecuador, and Bolivia restrict defense ties with the United States and have sought in some cases to eliminate the U.S. military presence from their countries. As one example, in 2014 the Ecuadorian government directed that the U.S. Embassy close its security cooperation office, further restricting defense cooperation between our countries. Despite such complex and evolving regional dynamics and within our current

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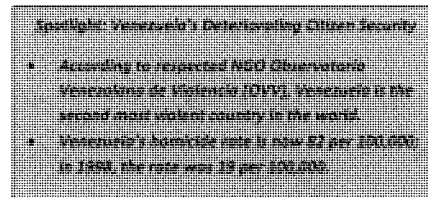
<sup>9</sup>Russian Defense Minister Sergei Shoigu, November 12, 2014.

<sup>10</sup> ALBA (in its Spanish acronym) stands for the Bolivarian Alliance for the Peoples of our America

resource constraints, U.S. Southern Command is ready and willing to partner with all regional militaries on issues like respect for human rights, disaster response, and illicit trafficking.

#### Implications of Venezuelan

**Instability.** Mr. Chairman, Members, our efforts to enhance regional stability are directly connected to our ability to engage.



Since 2003, the Venezuelan government has reduced its traditionally close military and defense ties with the United States, and in the course of the past ten years we have witnessed a dramatic decline in the country's democratic institutions. Venezuela now faces significant economic, social, and political instability due to rampant violent crime and poverty, runaway inflation, serious shortages of food, medicine, and electricity. Human rights abuses by security forces and the government's continued mismanagement of the country are contributing to an environment of uncertainty, and large segments of the population say the country is on the wrong track. Additionally, falling oil prices and deteriorating economic conditions could lead the Venezuelan government to cut social welfare programs and its foreign oil subsidy program, PetroCaribe. Further cuts to social welfare programs and continued shortages—which seem unavoidable—could likely lead to increased tensions and violent protests, encouraging President Maduro and his party to engage in additional repressive measures against protestors and the opposition. Cuts to PetroCaribe deliveries to its member nations could trigger regional economic downturns, which could elevate the risk of increased migration, especially in the Caribbean.

### **Command Priorities**

The U.S. military plays an important role in addressing these and other challenges to our hemisphere's security and stability. Despite significant resource constraints, U.S. Southern Command remains postured to contribute to a whole-of-government approach to advancing U.S. interests in the region. This important work is carried out by our command's most valuable assets: our Soldiers, Sailors, Airmen, Marines, Coast Guardsmen, and civilian employees. Last year was an active one for U.S. Southern Command, and I am proud of our contributions to the security of Latin America and the Caribbean. Looking to the year ahead, we hope to build on our past achievements and deepen our security partnerships, as we continue safeguarding the southern approaches to the United States.

**Detention Operations.** As we begin the thirteenth year of detention operations at Guantanamo, we continue to provide dignified, humane, and lawful care and treatment of detainees. In fact, the only people *not* treated humanely or having their human rights protected are the guards, especially our female and minority ones, who find themselves in a challenging environment where they regularly confront verbal and physical abuse and 'splashings' by many detainees. Mr. Chairman, Members, our guard and medical force is doing a superb job, and our nation should be extremely proud of these young military professionals. They execute a difficult, no-fail mission with honor, integrity, and the utmost professionalism, all within a pressure cooker of unrelenting public scrutiny and fabricated accusations of inhumane treatment and abuse. It is worth reiterating that everything they do—including supporting ongoing transfers, enteral feeding, military commissions, and periodic review boards—is done entirely at the direction of our military chain of command, in execution of U.S. national policy. Like all our men and women in uniform, these young Service members are second to none, and I thank the

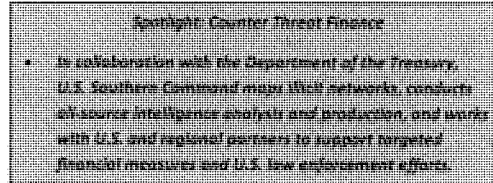
Congress for sharing that sentiment and for its continued support to our troops stationed at Guantanamo.

We also greatly appreciate congressional support to construct a new dining facility and medical clinic at Naval Station Guantanamo, which will address the health and safety concerns posed by the current facilities. As our service members perform our directed detention mission in an honorable and professional manner, the facilities in which they reside have long exceeded their useful life. Each year we struggle to maintain, repair, or replace obsolete or sub-standard facilities. It is difficult and expensive to mitigate life, health, and safety issues in an incremental, piecemeal manner. Our troops deserve better.

Finally, it is important to note that the strategic importance of U.S. Naval Station Guantanamo Bay is independent of the presence of the Joint Task Force. Its airfield and port facilities are indispensable to the Departments of Defense, Homeland Security, and State's operational and contingency plans. The Naval Station plays a crucial role in the interception and repatriation of migrants and serves as a critical distribution and staging area for humanitarian assistance and disaster relief operations. As the only permanent U.S. military base in Latin America and the Caribbean, its location provides persistent U.S. presence and immediate access to the region, as well as supporting a layered defense to secure the air and maritime approaches to the United States.

**Countering Transnational Organized Crime.** Our efforts to counter transnational organized crime focus on two complementary missions: defending the southern approaches of the United States and supporting partner nation efforts, in coordination with our U.S. interagency partners, to stem the flow of illicit trafficking. In both missions, we rely heavily on support from

the DHS, especially the U.S. Coast Guard. Secretary Jeh Johnson and the heroic men and women at DHS deserve enormous recognition



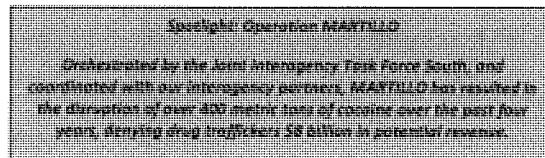
working cooperatively across the interagency to help us safeguard our nation's southern approaches. Secretary Johnson and I both share the conviction that homeland defense does not begin at the 'one yard line' of our Southwest border, but instead extends forward, throughout the hemisphere, to keep threats far from our nation's shores. Along with DHS, we work with the FBI, DEA, and the Departments of State and the Treasury to do exactly that.

While these partnerships are superb at the tactical level, I am frustrated by the lack of a comprehensive U.S. government effort to counter the TOC threat. Nearly four years after the release of the President's *National Strategy to Combat Transnational Organized Crime*, interagency CTOC activities in the region—especially in Central America—remain poorly coordinated and minimally funded. Fortunately, there is growing recognition that the magnitude, scope, and complexity of this threat demand an integrated counternetwork approach. I thank the Congress for recognizing this threat and expanding section 1004 authorities to include CTOC operations, and I fully support efforts to improve interagency coordination on this critical national security issue.

I am hopeful that the new *Strategy for U.S. Engagement in Central America* will broaden our approach to achieving lasting security in Central America and help reinvigorate our partnerships with the sub-region. As I have often said, we cannot shoot our way out of the CTOC challenge. It will truly take a whole-of-government effort, because Central America's prosperity, governance, and security are intrinsically connected. Economic growth is only

sustainable in an environment where democratic values and institutions flourish, citizens feel secure in their communities, impunity is reduced, and civil society and the media can play their rightful roles. President Obama requested \$1 billion in the FY2016 budget for the Department of State and USAID to implement the new Strategy. As Vice President Biden rightly points out, the cost of investing now to address Central America's challenges is modest compared with the costs of letting festering violence, poverty, and insecurity become full-blown crises.<sup>11</sup> I fully support the President's efforts to prioritize Central America at this crucial time, and urge Congress to support the President's budget request.

In another positive development, we are seeing significant improvements in regional cooperation. Although we receive a tiny fraction of the Intelligence, Surveillance, and Reconnaissance (ISR) assets we need, our ongoing Operation MARTILLO continues to yield tactical successes thanks to increased contributions by our partner nations and our continued coordination with DEA. The Coast Guard Commandant shares my view that transnational organized crime poses a significant threat to our hemisphere, and he has committed a 50% increase in



cutters equipped with ability to land a helicopter , plus a commensurate plus-up in maritime patrol aircraft hours. While the Commandant is doing everything he can to support us, the Coast Guard faces its own limitations, and this increase only translates to an additional two to three cutters, far below the 16 flight-deck equipped vessels required to conduct our detection and monitoring mission. This support, however, comes at a critical juncture for the counterdrug

<sup>11</sup> Vice President Joseph Biden, "A Plan for Central America." January 29, 2015.

mission, as the U.S. Navy decommissions its frigates and deploys its new Littoral Combat Ships to the Pacific. I would like to go on record here today before the Congress in strong support of the Coast Guard and DHS' efforts to recapitalize their fleet of cutters, some of which are in their fifth decade of service. The Coast Guard and U.S. Southern Command need these replacement cutters as soon as possible to continue the important work of securing our southern approaches.

Additionally, I believe we have a window of opportunity in Central America to capitalize on the region's growing political will to combat criminal networks. Last year the presidents of Guatemala, Honduras, and El Salvador developed a coordinated plan to address their countries' endemic challenges. These leaders recognize the magnitude of the tasks ahead and are prepared to address them, but they need our support. They are frustrated, however by conditions on U.S. security assistance—some of which are not even related to military-to-military engagements—and our cumbersome Foreign Military Sales procurement processes, which delay or even hinder cooperation efforts. Unfortunately, these conditions are often placed on governments that most need our help, providing an opening for other actors to successfully conduct outreach to the region. Unlike the United States, some countries place no emphasis on promoting human rights, anti-corruption measures, fair labor practices, and environmental protection as part of their offers of security assistance.

Our president has recognized the importance of supporting our Central American partners, making the region one of his top foreign policy priorities. We are now seeing real progress being made by the three 'Northern Triangle' countries. While there are many good examples, the situation is especially encouraging in Honduras, where the government is working hard to combat the drug trade, re-establish governance in remote areas, and take meaningful action to protect human rights. In cooperation with the U.S. Department of Justice, and for the

first time in the country's history, the Government of Honduras extradited seven Honduran nationals wanted to face drug trafficking charges in the United States. The Honduran government also deserves recognition for the establishment of a special investigative unit to combat impunity in Bajo Aguán and to improve citizen security. According to government figures, the 2014 homicide rate dropped to 66.4 per 100,000, a nearly 25% reduction in only two years. Although some groups expressed concerns over the use of the Honduran military in a domestic security role, the government of Honduras has developed a comprehensive strategy to phase out the use of its Military Police of Public Order (PMOP); has increasingly investigated and brought charges against high-level officials involved in corruption; and is making efforts to swiftly arrest those security forces implicated in human rights abuse. At the request of the Honduran president, the United Nations will open an office of the UN High Commission on Human Rights. Of note, human rights groups have acknowledged to me that Honduras is making real progress in this area.

This is a historical first step, and it simply would not have happened without our superb Ambassador to Tegucigalpa, Ambassador Jim Nealon, who provided help and advice not only to the Government of Honduras, but to the entire U.S. interagency. This is reflective of the close and continuous working relationship all Combatant Commanders have with their respective ambassadors throughout their Area of Operations. It is a team effort, and as a team we are hobbled in our interaction with foreign governments when there is no U.S. Ambassador in the seat, and frankly, the individual foreign partners take offense and are confused regarding U.S. interests in their country and the region. I know there are many reasons why there are often long gaps in coverage, but the fact is the lack of an ambassador handicaps the advancement of U.S. interests. This time last year, we did not have Ambassadors in Colombia, Peru, and Argentina.



I am grateful for Congressional action to remedy the lack of Embassy leadership in these countries, and I am hopeful that Ambassador-Designate Mr. Stafford Fitzgerald Haney will be confirmed as Ambassador for Costa Rica without delay.

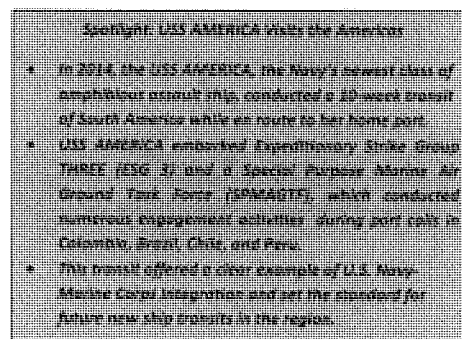
Finally, I would like to close this section by sharing a few examples of how our counterdrug efforts, conducted in coordination with DEA, are contributing to the region's overall security. In Guatemala, we provided infrastructure support and over \$17 million in equipment and training to the country's two interagency task forces along Guatemala's northern and southern borders. In concert with U.S. Northern Command, we also work with Mexico, Guatemala, and Belize to support Mexico's Southern Border Strategy. In Honduras, we helped create a 'maritime shield' to deflect drug trafficking off the country's northeastern coast and are supporting the Honduran government's citizen security efforts. In the Caribbean, we are prioritizing infrastructure projects designed to improve regional interdiction capabilities; last year we completed construction on new training facilities in the Dominican Republic and an operations center for the Regional Security System. To enhance our partners' efforts to counter increased drug trafficking in the Caribbean, we provide counterdrug training and support the Technical Assistance Field Teams, comprised of Coast Guard and DoD personnel who provide mentoring and technical assistance to 13 Caribbean nations. This support encourages our partners to be more self-reliant in the maintenance and upkeep of their assets, making them more dependable and capable allies in the CTOC fight. Further south, we are supporting the Peruvian military's increasingly successful efforts to improve their maritime interdiction capability, strengthen their collaboration with Colombia, and combat the scourge of narcoterrorism that has plagued their country for decades.

**Counterterrorism.** In 2014, we continued our work with the interagency, U.S. Embassy Country Teams, and our partner nations to counter Islamic extremism, recruitment, and radicalization efforts that support terrorism activities. Working closely with the interagency and partner nations, we also began monitoring the possible return of foreign fighter extremists participating in jihad in Syria. Over the past year our Special Operations Forces (SOF) conducted multiple engagements such as subject matter expert and intelligence exchanges, counterterrorism-focused exercises, and key leader engagements in countries throughout the region. Our Department of Defense Rewards Program yielded successes and offers a model for a low-cost, small footprint approach to counterterrorism. In 2014, this program enabled partner nation authorities to bring 33 members of terrorist organizations to justice. These, and other counterterrorism cooperation efforts, ensure our partners are able to mitigate terrorist threats before they can destabilize a country or reach the U.S. homeland.

#### **Building Partner Nation**

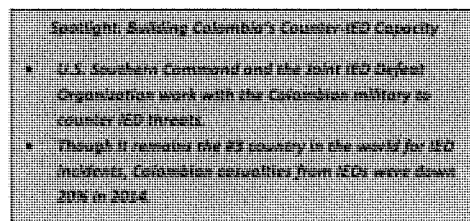
**Capacity.** Our engagement—through our humanitarian and civic assistance programs, defense institution building efforts like the Defense Institution Reform Initiative, and the U.S. Southern Command-sponsored Human Rights

Initiative—helps partner nations strengthen governance and development, professionalize their militaries and security forces, and increase their ability to conduct peacekeeping, stability, and disaster relief operations. Our military components are at the forefront of these engagement efforts and perform superb work in strengthening our security partnerships. While we engage on



a variety of different issues, I would like to highlight a few of our capacity-building efforts that are making a significant difference in the region.<sup>12</sup>

*Support to Colombia.* Colombia is a terrific example of how sustained U.S. support can help a partner nation gain control of their security situation, strengthen government institutions, eradicate corruption, and bolster their economy. Colombia's turnaround is nothing short of phenomenal, and it stands shoulder-to-shoulder with the United States as together we work to improve regional stability. Mr. Chairman, Members, as you know, the United States has a special relationship with only a handful of countries throughout the world. These relationships are with countries that we rely on to act as regional stabilizers, countries that we look to for international leadership, countries that we consider our strongest friends and most steadfast allies. Colombia unquestionably plays that role in Latin America. Through the U.S.-Colombia Action Plan on Regional Security, Colombia provides vital assistance to its Central American



and Mexican counterparts in the fight against criminal networks. I want to note that every aspect of U.S. collaboration under this Plan, including activities conducted by U.S. Southern Command,

is facilitated through U.S. security assistance and governed by the same U.S. laws and regulations—especially those requiring the human rights vetting of units—governing my own personnel.

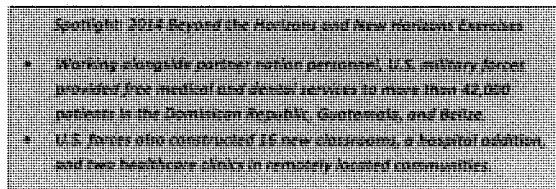
I fully support the government of Colombia's efforts to ensure that justice and accountability are integral parts of the peace process. We must sustain U.S. support throughout

<sup>12</sup> A complete list of activities by our military components can be found in the Annex.

this process and during the post-conflict phase as our closest partner works to end a decades-long insurgency. As I have told my Colombian colleagues, the last 50 years were easy compared to what the next five hold in store. Our goal is to ensure Colombia can sustain U.S.-funded programs, and to that end we work with the Defense Institution Reform Initiative to improve the Colombian Ministry of National Defense's strategic planning capabilities. As testament to the enduring strength of our relationship, Colombia wants to partner with the United States for planning and implementation of their Disarmament, Demobilization, and Reintegration (DDR) process. We are exploring options to provide verification, advice, and monitoring of these efforts.

*Exercise Program.* Bilateral and multilateral exercises with partner nations improve staff planning and operations, promote interoperability, and support national security objectives. While the technical skills our partners learn during these exercises are important, the personal relationships that are made are invaluable, binding participating countries together as equal partners and true friends. In 2014, our four operational exercises included INTEGRATED ADVANCE, which exercises our response to various regional contingencies, and FUSED RESPONSE, designed to improve the training, readiness, and capability of Belizean, Brazilian, Canadian, and U.S. special operations forces. We also held four multilateral exercises, including TRADEWINDS, which aims to improve the capability of Caribbean nations to counter transnational organized crime and respond to a natural disaster; PANAMAX, which focuses on the defense of the Panama Canal by a 17-nation multinational force; and FUERZAS ALIADAS HUMANITARIAS, which brings together 11 partner nations and regional humanitarian organizations to improve coordination on disaster response.

*Humanitarian and Civic Assistance.* As a complement to our multinational exercises, our humanitarian and civic assistance program help demonstrates the United States' enduring commitment



to the citizens of Latin America. There are no better symbols of this commitment than our humanitarian exercises and the USNS COMFORT, which returns to the region to conduct humanitarian missions in 11 countries as part of CONTINUING PROMISE 2015.

Our humanitarian mission also helps strengthen governance and partner nation response capacities. In coordination with the U.S. Agency for International Development (USAID), in 2014 we funded the construction of 172 humanitarian projects in the region, building disaster relief warehouses, emergency operations centers, and emergency shelters. This infrastructure helps increase partner nation capacity to respond to a regional disaster, often without U.S. assistance. Last year, the Government of Haiti successfully responded to flooding in Nord using emergency response facilities constructed under this program. This is a major step and a sign of continued progress in Haiti; in the past, such an event would have required U.S. or outside assistance.

*Public-Private Cooperation.* U.S. Southern Command remains at the forefront of public-private cooperation, a force multiplier in our exercises, operations, and engagement activities. In 2014, our collaboration with non-governmental and private sector entities yielded over \$10 million in service and gifts-in-kind—such as school furniture and medical equipment—to partner nations in conjunction with our annual exercises. Early this year we held a forum that brought together U.S. and partner nation government officials and private sector leaders to brainstorm

ways to improve security and economic investment in El Salvador, Guatemala, and Honduras. The forum featured lessons learned from Colombia and Mexico on the importance of security to economic development and identifying near-term activities to improve the security situation and, by extension, the investment climate in these three countries. To quote Paul Brinkley, who wrote one of the most impressive books I have read on the subject, the greatest element of our national power is our “private-sector economic dynamism.”<sup>13</sup> I am hopeful American businesses will help advance our President’s goal of a stable, prosperous, and secure Central America.

*Promoting Respect for Human Rights.* Mr. Chairman, Members, human rights are fundamental to our capacity-building efforts in the region. During my time as Commander of U.S. Southern Command, I have aggressively worked to promote genuine and concrete respect for human rights throughout Latin America. One of my greatest tools in this mission is actually something pretty simple, and doesn’t cost the taxpayer one penny: open and frank dialogue with both our closest partners and our fiercest critics. Every conversation I have—whether with a president, with a minister, with a chief of defense or his subordinates, with U.S. or regional media outlets, or human rights representatives from Washington to Montevideo—begins and ends with a straightforward discussion on human rights.

I am proud to state that I incorporate meetings and engagements specifically focused on human rights into nearly every one of my numerous trips to the region. I do this because I have long recognized the vital role human rights organizations play in supporting democracy and open societies, strengthening the rule of law, and ensuring that government officials are accountable to their citizens. As I have said before, the U.S. military doesn’t just talk about human rights, we

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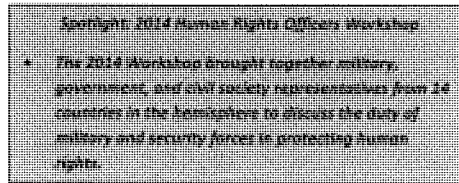
<sup>13</sup> Paul Brinkley, *War Front to Store Front: Americans Rebuilding Trust and Hope in Nations Under Fire*. New York: 2014.

*do* human rights. We teach it. We enforce it. We live it. The protection of human rights is embedded in our doctrine, our training, and our education, and above all, in our moral code. It is the source of our great strength as a military power, and it is also our best defense against losing legitimacy in the hearts and minds of the people we have taken an oath to protect.

Mr. Chairman, I believe without question that improvement in human rights most often comes when countries have the opportunity to work directly with Americans. Human rights improvements in this region have largely come as a direct result of close and continuous dialogue and engagement by the United States government. Additionally, because of partner nation interaction with brave and dedicated U.S. law enforcement personnel like the FBI, Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), the U.S. Coast Guard and particularly DEA, we have seen a concrete and I believe long-term positive effect on the professionalism of law enforcement institutions in the region. It is what our partners learn in our military and law enforcement training, by the example we show and the attitudes they absorb from us—when they attend our courses, exercises, and in senior officer conferences and seminars, but most powerfully by simply working shoulder-to-shoulder with young American professionals that do human rights, do their duties entirely without thought of corruption, who do not preach while they wave their fingers in the faces of their counterparts, but treat them like equal partners in activities that are in the national security interests of both their nations—that are, together, making a difference.

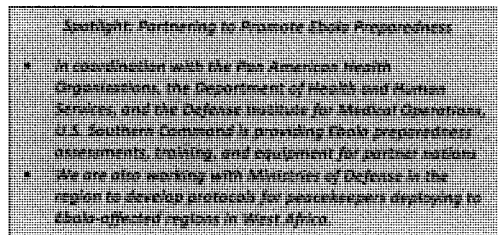
For our part, U.S. Southern Command's commitment to promoting respect for human rights can be seen in many activities we carry out with our partners in the region, and I am proud to lead the only Combatant Command with a dedicated Human Rights Office. This office also has a long history of providing support and expertise to our partner nation militaries in

strengthening their human rights programs and improving their human rights performance. In 2014, U.S. Southern Command sponsored a series of civil-



military dialogues in Guatemala and Honduras, two countries facing a ruthless onslaught of transnational criminal activity. These dialogues brought together influential human rights NGOs and key military leaders to discuss shared concerns, including the deployment of military forces in citizen safety missions. I thank the Congress for recognizing the enduring value of this mission, and we deeply appreciate the flexibility to soon provide human rights training to units that might not have been previously eligible to receive it.

**Planning for Contingencies.** Finally, planning and preparing for crisis and contingency response are essential elements of U.S. Southern Command's mission. Contingency planning



and preparation, including exercises like PANAMAX, FUSED RESPONSE, and INTEGRATED ADVANCE, prepares our organization to respond to various

scenarios such as an attack on critical infrastructure, Caribbean mass migration, humanitarian crises, natural disasters, or the evacuation of U.S. citizens in the region. We work closely with the Office of U.S. Foreign Disaster Assistance (USAID/OFDA) and other interagency and regional partners to monitor events like the increase in Haitian and Cuban migrant flows, the potential spread of infectious diseases like Ebola, and the devastating drought in Central America, all of which could trigger a crisis event. While we stand ready to support U.S.



government response efforts should the need arise, mandated budget and workforce reductions limit our ability to rapidly respond to any significant contingency without substantial headquarters augmentation.

### **Critical Needs and Concerns**

*Budget Cuts.* U.S. Southern Command is grappling with the cumulative effect of the various budget cuts enacted over the past few years. Force allocation cuts by the Services—including troops, ships, planes, Coast Guard cutters, and ISR platforms—are having the greatest impact on our operations, exercises, and security cooperation activities. I fully expect reductions to affect all aspects of our operations and engagements with our partner nations, including capacity-building activities, multinational exercises, information operations, interagency support, and our ability to respond to crises or contingencies.

We are already feeling the impact at our headquarters, where we have implemented a 13% reduction in civilian billets and an 11% reduction in military ones. As an economy of force Combatant Command, these cuts have a disproportionate effect on our daily operations. During last year's capstone exercise PANAMAX, it became clear that resource constraints and manpower reductions are compromising our training and readiness. Fortunately, these limitations were revealed in an exercise scenario and not during a real-world contingency, and we are taking steps to mitigate some of these shortfalls. To that end, we are instituting a Strategic Human Capital Management Plan and have realigned personnel to support our most critical missions. We are also improving our business practices to gain greater efficiencies in our management of mission requirements and application of resources. I want to stress, however,

that if sequestration returns in FY16, our ability to support national security objectives, including conducting many of our essential missions, will be significantly undermined.

*Intelligence, Surveillance, and Reconnaissance (ISR) Shortfalls.* We deeply appreciate Congressional assistance to mitigating some of our chronic ISR shortfalls. Thanks to the support of Congress, we have increased maritime patrol capacity in support of counterdrug operations in the region. We are also thankful to the Congress for recognizing the urgency of the challenges we face in the region and the importance of adequately sourcing our missions. I continue to be concerned, however, by the long-term consequences of our limited awareness and lack of insight into security challenges in the region. The longer these shortfalls persist, the more difficult it is to track and monitor potential threats to our nation's security, including the growing influence of extra-regional actors, the overlap between criminal and terrorist networks, and signs of potential regional instability. While we recognize that global defense priorities must be adequately sourced, limited tactical ISR allocation and national technical focus is impairing virtually every one of our assigned missions and exposing the southern approaches to the United States to significant risk. Sequestration will compound this challenge; when it comes to sourcing, we are already the lowest priority Geographic Combatant Command, and sequestration will likely eviscerate our already limited ISR capacity.

To mitigate some of these shortfalls, we have successfully employed non-traditional assets in support of our Title 10 detection and monitoring obligations. The Air Force's JSTARS is especially important, providing a detailed maritime surveillance capability that is unsurpassed and increasing the efficiency of wide area surveillance and long-range maritime patrol aircraft. A single JSTARS sortie can cover the same search area as 10 maritime patrol aircraft sorties. The use of these types of assets is a 'win-win' for U.S. Southern Command and the Services; we

receive much-needed assets while the Services receive pre-deployment training opportunities in a 'target-rich' environment.

*Military Construction.* In support of our nationally-directed contingency response mission, we are also seeking \$28 million in funding to construct basic horizontal infrastructure that would be needed to operate migrant camps at Guantanamo in the event of a maritime mass migration. These projects would include the shaping of terrain and installation of drainage and utilities infrastructure. Without this funding, we will not be able to quickly house the required number of migrants without compromising United Nations' standards and placing severe constraints on current operations at the Naval Station. I look forward to working with the Congress to find a solution to these and other requirements.

*Quality of Life and Military Housing.* Mr. Chairman, the men and women assigned to U.S. Southern Command are at a huge financial and benefits disadvantage, working and living in one of the most expensive cities in the world and receiving little in the way of adequate compensation. Access to commissary and PX facilities are an integral part of the benefits package guaranteed by law, yet we lack both at our installation. Our assigned personnel receive minimal Cost of Living Allowances for South Florida, even though non-housing expenditures like car insurance are high.<sup>14</sup> This is particularly hard on our junior enlisted personnel. An E-3 receives a mere \$29 for a monthly Cost of Living Allowance, while an E-9 receives \$44; neither amount covers monthly tolls on South Florida's roads.

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<sup>14</sup> According to the Economic Policy Institute, it takes nearly three times the federal poverty line to cover basic living expenses in Miami.

Given current housing allowances, many of our families cannot afford to live near the Command, and government housing acquired through domestic leasing is both expensive and extremely competitive. The housing situation will become even more challenging for our officer-grade personnel, who will see, on average, approximately 9% reduction in their BAH. I would like to go on record and note that I have serious concerns over the validity of the process used to calculate BAH for our assigned troops. A permanent military housing solution in Doral would allow us to bring our service members and their families into a secure and affordable community close to our facility. We are working with U.S. Army Installation Management Command to find a long-term housing solution for our Service members and their families.

### **Conclusion**

I would like to conclude my testimony with a note of warning and a sign of hope. Two decades ago, U.S. policy makers and the defense and intelligence communities failed to anticipate the collapse of the Soviet Union or the rise of international terrorism. Today, another challenge is in plain sight: transnational organized crime threatens not only our own security, but the stability and prosperity of our Latin American neighbors. As the Congress knows, the United States and our partners worked hard to ensure the Western Hemisphere is a beacon of freedom, democracy, and peace. In the face of the corrosive spread of criminal networks and other threats, we must work even harder to ensure it remains that way.

The good news is we know how to win this fight. Colombia taught us that the key to defeating insurgents is the same as defeating criminal networks: a strong, accountable government that protects its citizens, upholds the rule of law, and expands economic opportunity for all. It taught us that countering illicit trafficking and countering terrorism often go hand in hand. It taught us that U.S. interagency cooperation, coupled with a committed partner, can help

bring a country back from the brink—and for a fraction of the cost of operations in Iraq and Afghanistan. And above all, Colombia taught us that sustained engagement by the United States can make a real and lasting difference. We have learned these lessons. Now is the time to apply them to the region as a whole. Thank you, and I look forward to your questions.

### **Annex: 2014 Component Accomplishments**

#### **U.S. Army South (ARSOUTH) Headquarters: San Antonio, Texas**

- **Security Cooperation:** ARSOUTH conducted 174 security cooperation events with 18 countries in U.S. Southern Command's (USSOUTHCOM's) area of responsibility. These events included: Army-to-Army Staff Talks with key countries, Foreign Liaison Officers assigned to ARSOUTH, Conference of American Armies activities, professional development exchanges on multiple topics, Army commander and distinguished visitor program, and Joint/Combined/Multinational Exercises and Operations. These events represent engagements aimed at building partner nation capabilities with other militaries in the region.
- **Countering Transnational Organized Crime (CTOC):** ARSOUTH conducted numerous CTOC training sessions with the El Salvador Army Intelligence Battalion, the two new Guatemalan Interagency Task Forces (IATF), and two Honduran Brigades associated with border security. These efforts have greatly improved the individual country's capability to disrupt TOC operations and has set the stage for the next training phase in FY15.
- **Intelligence Security Cooperation:** In addition to the El Salvador effort, the ARSOUTH Intelligence Team conducted engagement activities enabling military intelligence capacity building in support of countering transnational threats in Brazil, Colombia, Guatemala, Honduras, Chile, and Peru.
- **Counter Terrorism:** ARSOUTH conducted 20 Subject Matter Expert Exchanges (SMEEs) in ten countries that included over 750 host nation soldiers. The engagements included: Medical, Search and Rescue, Logistics, Force Protection, and Communications.
- **Civil Military Relations:** ARSOUTH conducted Civil Military Relations Professional Development Exchanges in Brazil, Colombia, Chile, Guatemala, Honduras and El Salvador, improving the ability of these countries to conduct inter-organizational coordination during humanitarian assistance/disaster relief operations, and to counter transnational criminal organizations. These exchanges provide a forum for bilateral executive-level information.
- **Humanitarian Assistance Program (HAP):** HAP conducts activities to build partner nation capacity in providing essential services to its civilian population including: responding to disaster and other crises; reinforcing security; and sustaining stability in a host nation or region. ARSOUTH, USSOUTHCOM's HAP construction program manager, completed 19 projects in Belize, Guatemala, Honduras, Panama and Peru, and initiated the planning for nine new construction projects in Belize, Guatemala, Honduras, El Salvador, and Peru.
- **Global Peace Operations Initiative (GPOI):** GPOI is a U.S. government-funded security assistance program to enhance international capacity to effectively conduct United Nations and regional peace support operations. ARSOUTH, as USSOUTHCOM's GPOI construction program manager, completed four projects in Guatemala, Paraguay and Peru, with four ongoing construction projects in El Salvador and Guatemala.
- **Reintegration:** ARSOUTH executed a Reintegration operation for the surviving crew members of aircraft BAT 02 following their crash in Colombia, a Post Isolation Support

Activity in support of the FBI for an American Citizen held hostage by the FARC in Colombia, and for a repatriated POW from Afghanistan.

- **Conference of the American Armies (CAA):** The Conference of American Armies (20 member nations, 5 observer nations and two International Military Organizations) strengthens relationships and improves interoperability in peacekeeping and disaster relief operations through the creation and implementation of practical initiatives approved by the commanders of the member Armies. ARSOUTH delegations represented the U.S. Army Chief of Staff at the Transfer Ceremony to Colombia, a 1st Communications Exercise and a Specialized Conference on IEDs in Colombia, a Geospatial Terrain data base Ad-Hoc Committee in Peru, and a Disaster Relief Field Training Exercise in Argentina.
- **Beyond the Horizon (BTH):** The Humanitarian and Civic Assistance Field Training Exercise, BTH Dominican Republic (APR-JUN 14), consisted of five engineer projects, two general medical and one dental exercises (MEDRETEs and DENTRETE), treating over 12,917 patients. 1,468 U.S. troops participated in the exercise and the Dominican military provided 107 personnel. BTH Guatemala (MAR-JUL 14) consisted of five engineer projects, and three general MEDRETEs, treating over 21,000 residents. 1,242 U.S. troops participated and the Guatemalan military provided over 120 personnel.
- **Fuerzas Aliadas Humanitarias (FAHUM):** The Humanitarian Assistance and Disaster Relief Command Post Exercise was hosted by El Salvador to build Partner Nation capacity to respond to a major disaster and strengthen military/security force collaboration and cooperation in the region. Participants included 300 from El Salvador, 66 U.S. and 33 from other Partner Nations.
- **PANAMAX 2014:** This year's Joint/Combined operational exercise focused on the defense of the Panama Canal designated ARSOUTH as HQ, Multi-National Forces-South with a total of 380 participants (65 participants coming from 17 Partner Nations). ARSOUTH also hosted the CFLCC with Brazil as the lead country which included 91 participants with 61 of them coming from 12 partner nations (PNs). In addition, ARSOUTH participated in a bilateral exercise with the Government of Panama called PANAMAX – Alpha. Forty U.S. personnel worked with the Panamanians coordinating U.S. forces assistance during a simulated national disaster.

#### **U.S. Naval Forces Southern Command (COMUSNAVSO)**

##### **Headquarters: Mayport, Florida**

- U.S. Naval Forces Southern Command/ U.S. FOURTH Fleet (USNAVSO/FOURTHFLT) employs maritime forces in cooperative maritime security operations in order to maintain access, enhance interoperability, and build enduring partnerships that foster regional security in the USSOUTHCOM Area of Responsibility (AOR).
- **“AMERICA visits The Americas” 2014:** USS AMERICA, lead ship of a new class of amphibious ships for the U.S. Navy, completed an historic transit of the USSOUTHCOM AOR. AMERICA conducted Theater Security Cooperation (TSC) events and completed basic maritime operations while circumnavigating South America. “AMERICA Visits the Americas” served as our best Key Leader Engagement (KLE) opportunity in years, as AMERICA conducted TSC port visits to Cartagena, Colombia; Rio de Janeiro, Brazil; Valparaiso, Chile; and Callao, Peru. AMERICA also flew out distinguished visitors from

Trinidad and Tobago, Uruguay, and El Salvador to visit the U.S. Navy's newest ship while she sailed in the vicinity of those three Partner Nations.

- **Southern Partnership Station (SPS):** SPS is a series of Navy/Marine Corps engagements focused on TSC, specifically Building Partner Capacity (BPC), through Subject Matter Expert Exchanges (SMEEs) with partner nation militaries and civilian security forces. SPS engagements include Community Relations Projects that focus on our partnerships, shared interests, and shared values. 2014 SPS Deployments:
  - **SPS Joint High Speed Vessel 2014 (SPS JHSV 14):** USNS SPEARHEAD, lead ship of a new class of ships for the U.S. Navy, built partner capacity while conducting TSC engagements through the use of Adaptive Force Packages (AFPs) ashore in Belize, Guatemala, Colombia, and Honduras. At sea, SPEARHEAD conducted Detection and Monitoring (D&M) Operations at sea in support of Operation MARTILLO. The success of the Sailors, Marines, Soldiers, Airmen, NCIS Agents, and Civilian Mariners making up the SPEARHEAD Team set a firm foundation for future JHSV and AFP deployments to the USSOUTHCOM AOR. Detailed planning is in progress for SPS JHSV-15.
  - **SPS Oceanographic 2014 (SPS OCEANO 14):** In support of USSOUTHCOM's priority Oceanographic, Hydrographic, and Bathymetric requirements, there were multiple engagements with Partner Nation counterparts. With the support of the Naval Oceanographic Office, survey ship USNS PATHFINDER conducted hydrographic surveys in the Western Caribbean, shore-based Fleet Survey Teams conducted hydrographic surveys in coastal waters of Peru and Honduras, and a Light Detection and Ranging aircraft and crew conducted hydrographic surveys in the coastal waters of Honduras. All SPS OCEANO surveys are conducted with the assistance of Partner Nation personnel and equipment, and the hydrographic survey and environmental assessment data is shared to enable safe and effective maritime navigation.
- **Operation MARTILLO:** Seven frigates, JHSV USNS SPEARHEAD, four fixed-wing Maritime Patrol aircraft and two Scientific Development Squadron ONE detachments deployed to support Operation MARTILLO, conducting D&M Operations under the tactical control of Joint Interagency Task Force South, targeting illicit trafficking routes in the waters off Central America.
- **PANAMAX 2014:** Colombia served as Combined Forces Maritime Component Commander (CFMCC) for the annual PANAMAX Exercise, which exercises defense of the approaches to the Panama Canal. The Colombian Navy led a multinational staff of more than 300 military and civilian personnel from 15 Partner Nations (including the U.S.), all based at USNAVSO/FOURTHFLT Headquarters in Mayport. Now in its 12th year, PANAMAX is designed to train U.S. and partner nation personnel in the execution of stability operations under the auspices of United Nations' Security Council resolutions; provide interoperability training for the participating multinational staffs; and build participating nation capability to plan and execute complex multinational operations.
- **UNITAS 2014:** UNITAS, Latin for "Unity", is the longest-running multinational maritime exercise in the world. Peru hosted the 55th iteration, featuring 14 Partner Nations (including



the U.S.), 20 ships, patrol boats, two submarines, seven helicopters, four maritime patrol aircraft, 10 fixed-wing tactical aircraft, and several thousand Sailors. The two-week exercise consisted of a multi-threat, multi-day scenario where participants operated as a multinational force working under a United Nations Security Council Resolution.

- **SIFOREX 2014:** "Silent Forces Exercise," or SIFOREX, is a biennial exercise hosted by Peru that focuses on Anti-Submarine Warfare proficiency against diesel submarines. U.S. participation included USS INGRAHAM, P-8 Poseidon and P-3 Orion Aircraft, and Commander Destroyer Squadron 40 Staff. For the first time, Naval Forces from Brazil and Colombia joined Peru and the U.S. for SIFOREX.

### **12th Air Force (Air Forces Southern)**

**Headquarters: Davis-Monthan AFB, Tucson, Arizona**

- **Security Cooperation:** Air Forces Southern (AFSOUTH) led 41 security cooperation events in 11 USSOUTHCOM Partner Nations. Engagements focused on communications, aircraft operations and maintenance, ISR, air patrol operations, NVG, aerial port, maintenance, space, cyber, mishap investigation, command and control, space capabilities, close air support, legal, public affairs, flight medicine capabilities, and a Contingency Airfield Pavements Evaluation. The 571<sup>st</sup> Mobility Support Advisory Squadron completed 17 air adviser events to Peru, Guatemala, Honduras, Colombia, Chile, and El Salvador, training 241 partner nation military members.
- **Legal:** The AFSOUTH Staff Judge Advocate promoted Law of Armed Conflict adherence and Human Rights Law in 12 legal engagement activities with Colombia, Honduras, El Salvador, Guatemala, Peru, Brazil, Chile, Ecuador, Uruguay, and the Dominican Republic.
- **NEW HORIZONS 2014 (Belize):** AFSOUTH trained 444 US military personnel in joint/combined/interagency environments, in addition to 8 Canadian medical personnel, 25 Belize Defense Force (BDF) engineers, and over 40 BDF personnel. Personnel built five classrooms, which will accommodate 390 additional students, and one hospital addition. US and Canadian medical personnel treated over 19,000 patients during five medical, surgical, & dental events. SMEEs covered maternal & child health, public health, and biomedical equipment topics. Veterinarian services provided 500+ animal vaccinations.
- **ISR Missions:** AFSOUTH provided command and control for ISR missions in support of USSOUTHCOM priorities. AFSOUTH executed 897 ISR missions and 5,004 flight hours, resulting in over 27,841 images and nearly 13,497 minutes of video. This information assisted in numerous drug trafficking seizures in the SOUTHCOM AOR by the United States and its Partner nations in FY14. AFSOUTH is assisting critical partner nations in CD/CNT efforts and is currently working to enable Air Force operational and ISR capability in both Guatemala and Honduras. AFSOUTH continues to assist both Colombia and Peru in maintaining the strategic initiative against illegally-armed combatants who previously threatened the very existence of those nations.
- **Airlift Missions:** AFSOUTH executed 80 theater airlift missions, moving more than 3,900 passengers and 280 tons of cargo throughout USSOUTHCOM's area of responsibility.
- **Medical Deployments:** AFSOUTH International Health Specialists had 25 global health engagements with partner nations, including aerospace physiology programs in safety, human factors, and hypobaric chambers; also focusing on standards for aeromedical

evacuation/patient movement/critical care air transport teams. The AFSOUTH Command Surgeon's directorate hosted nine priority nations for an Aerospace Medicine Symposium.

**Marine Corps Forces South (MARFORSOUTH)**  
**Headquarters: Doral, Florida**

- **Theater Security Cooperation:** In 2014, MARFORSOUTH completed over 88 Security Cooperation events in 27 countries. This resulted in over 750 Partner Nation Marine Corps and Defense Force personnel trained. While continuing to foster long-term relationships based on mutual respect and common values, MARFORSOUTH conducted a variety of key leader engagements throughout the USSOUTHCOM area of responsibility that reinforced our commitment to partner nation leadership. To meet shared security objectives in combatting transnational organized crime, MARFORSOUTH delivered tailor-made training to our partners by establishing persistent presence security cooperation teams in Belize, Guatemala, and Honduras. This was often hand-in-hand with our Colombian Marine Corps partners through the U.S./Colombia Action Plan.
- **Special purpose Marine Air/Ground Task Force – South (SPMAGTF-S):** Demonstrating the strength of the U.S. Navy and Marine Corps Team, MARFORSOUTH embarked a SPMAGTF aboard the USS AMERICA during its transit through the USSOUTHCOM area of responsibility. This transit featured MV-22 Ospreys that conducted basic maritime operations at sea and supported strategic-level diplomatic engagements in Colombia, Brazil, Chile, and Peru, Trinidad and Tobago, Uruguay and El Salvador. Marines, alongside the U.S. Navy, partnered with other Nation's Sailors and Marines in a variety of theater security cooperation events that included passage-at-sea exercises, SMEEs, tours for partner nation military and civilian personnel, community relations projects, and sporting events.
- **SPS-JHSV 14 – Marine Detachment (MARDET):** In support of U.S. Naval Forces Southern Command/U.S. Fourth Fleet's SPS-JHSV, MARFORSOUTH deployed 45 Marines and Sailors to Belize, Guatemala, and Honduras to provide training in small-unit tactics, and support with engineering, civil affairs, and information operations activities. The MARDET enhanced the SPS-JHSV mission by building partner capacity in riverine infantry integration for 100 partner nation forces, conducting 14 humanitarian assistance and military construction projects and 175 civil-military engagements, and promoting a nation-wide civilian reporting system in Belize.
- **TRADEWINDS Phase II Ground:** The Dominican Republic hosted this JCS-directed exercise for over 250 participants, spanning 15 countries. In partnership with the Dominican Republic Marine Corps and the Canadian Army, U.S. Marines provided logistics, casualty evacuation and medical support while leading classroom instruction and field training. Exercise participants collaborated on countering illicit traffic activity, humanitarian assistance/disaster relief, small arms weapons handling, basic infantry skills, civil affairs, human rights and law enforcement tactics, techniques and procedures.
- **Partnership of the Americas (POA):** MARFORSOUTH, in conjunction with USNAVSO and regional (PNs), conducted a multinational exercise incorporating amphibious ships from Mexico and Chile and eight other partner nation naval infantries. A combined task force executed a simulated humanitarian assistance/disaster relief operation, successfully demonstrating interoperability and security cooperation while focusing on amphibious staff

planning, training and equipping for future peace support operations and humanitarian assistance missions.

- **Security Augmentation Force (SAF):** The SAF is MARFORSOUTH's designated company of Marines that reinforces Diplomatic Missions in the AOR, as required. In close coordination with Department of State, the SAF is postured in CONUS should an Ambassador decide that the local guard force is unwilling, unable, or insufficient to provide security to his mission. While there are currently no high threat posts in the AOR, the potential for a natural disaster or popular unrest are likely for many Embassy locations. MARFORSOUTH deploys its Marine Liaison Element to visit each Embassy, solidifies plans of action with the Country Team, and captures relevant information that will enable SAF in rapidly responding to crisis.

#### **Special Operations Command South (SOCSOUTH)** **Headquarters: Homestead, Florida**

- **Building Partner Capacity:** In 2014, SOCSOUTH maintained small elements in Belize, Colombia, the Dominican Republic, El Salvador, Honduras, Guatemala, Guyana, Panama, and Peru working with key units to improve ground and maritime interdiction, civil affairs, Military Information Support Operations (MISO), and intelligence capacities. SOCSOUTH used episodic engagements – including 36 Joint Combined Exchange Training (JCET) events – with multiple Central American, South American, and Caribbean partners to develop U.S. forces' skills and expand partner nation capacity. In Honduras, SOCSOUTH teams and Colombian counterparts helped train over 200 Honduran National Police officers for the new Tigres special response unit as part of expanded U.S. support to Honduran authorities as they confront sources of insecurity in urban and remote rural areas. In the Andean Ridge, SOCSOUTH continued to partner with Colombia and Peru to confront narco-terrorist insurgencies whose illicit trafficking operations extend throughout the hemisphere.
- **Civil Affairs:** In 2014, 14 civil affairs teams and civil-military support elements engaged nine partner nations to reduce the vulnerability of key populations influenced by transnational organized crime or violent extremism. The teams assisted with counter-recruitment programs and, in many cases, supported partner nations in building civil affairs capacities.
- **Military Information Support Operations:** SOCSOUTH maintained military information support teams in six key partner nations supporting Colombia's Demobilization and Counter-Recruitment Programs, Guatemalan Interagency Task Forces, Panamanian security services' outreach programs in the Darien border region, the DoD Rewards Program, U.S. Government Anti-Trafficking in Persons efforts, and expanded active tip lines to under-governed spaces. These activities supported a broad range of efforts against transnational organized criminal and violent extremist organizations.
- **Intelligence Analytical Support to US Country Teams:** SOCSOUTH provides intelligence and counter-threat financing support to U.S. Country Teams focusing on terrorism, human smuggling networks, and transnational organized crime. In Belize, the Dominican Republic, and Honduras, SOCSOUTH helped develop host nation capabilities

and country team support through a number of subject matter exchanges, and mentored them in institutionalizing intelligence pipelines.

- **Building Intellectual Capital:** SOCSOUTH, in conjunction with the Colombian Joint Staff College, conducted five Counter-Terrorism Fellowship Program-funded seminars in Bogota, Colombia during 2014. Approximately 70 subject-matter expert presenters from the U.S., Colombia, and other nations collaborated with over 700 participants from 18 Western Hemisphere and NATO countries
- **FUERZAS COMANDO 2014:** FUERZAS COMANDO is a USSOUTHCOM-sponsored, SOCSOUTH-executed multinational exercise encompassing a Special Operations skills competition and a Senior Leader Seminar designed to foster relations and improve cooperation throughout the theater. The 2014 edition of FUERZAS COMANDO was held at Fort Tolemaida, Colombia with 17 Partner Nations participating. Colombia placed first overall, the U.S. placed second, and third place went to El Salvador.
- **FUSED RESPONSE 2014:** SOCSOUTH executes an annual CJCS-directed exercise to validate time sensitive crisis action planning, as well as training, readiness, interoperability and capability of Special Operations Forces in support of regional crises and contingencies. FUSED RESPONSE 2014 was a Joint and Combined exercise held in Belize in conjunction with the Belize Defence Force and featured guest observers from Brazil and Canada to foster stronger relationships and greater interoperability with these fellow Western Hemisphere nations. Involving SOCSOUTH staff and personnel from each of its components, the exercise focused on improving the capabilities of the participant forces and increasing their capacity to confront common threats such as illicit traffic, organized crime, and terrorism.

#### **Joint Task Force Guantanamo (JTF-GTMO) Guantanamo Bay, Cuba**

- **Safe and Humane Custody and Control:** JTF-GTMO conducted safe, humane, legal, and transparent custody and control of detainees, including those convicted by military commission. Detainees maintained family contact via mail, telephone calls and, in areas which support this service, videophone conferences coordinated by the International Committee of the Red Cross (ICRC). High quality care, to include routine and urgent medical care, was provided to detainees on a 24-hour basis. General surgical care, dental care, preventative medicine, optometry and mental health services were provided, or arranged, as was targeted specialty care on a recurring basis.
- **Legal and Transparent Operations:** Assessments of detention conditions by the ICRC continued with four visits in 2014. The ICRC verifies compliance with international standards associated with law of war detention (as specified in the Geneva Conventions and other international conventions) and provides confidential advice for suggested improvements to the United States via the Joint Task Force Commander and U.S. Southern Command. Additionally, detainees are granted access to legal representation, and received more than 847 Military Commissions and 273 Habeas attorney visits in fiscal year 2014. Committed to transparency, JTF-GTMO hosted 100 media representatives from 73 domestic and international news organizations and answered hundreds of media queries during the past year. Similarly, JTF-GTMO also hosted numerous Distinguished Visitor visits, including

U.S. Senators, Representatives, Service Chiefs and senior DoD, DHS, DOJ and DoS policy makers.

- **Military Commissions:** Support for the Military Commissions process is a priority of JTF-GTMO. These proceedings are open to observation by the media, victim family members, non-governmental organizations and other visitors. In fiscal year 2014, JTF-GTMO supported 14 days of hearings which addressed pre-trial motions in the case of *U.S. v. Mohammad, et al.*, the five individuals accused of coordinating the September 11, 2001 attacks on the U.S. (referred to in the press as “the 9/11 Five”) and 16 days of hearings to address pre-trial motions in the case of *U.S. v. Al Nashiri*, the alleged USS COLE bomber. Additionally, the Court arraigned and conducted two days of hearings to address pre-trial motions in the case of *U.S. v. Al Iraqi*, an alleged Al Qaeda commander charged with law of war offenses.

#### **Joint Interagency Task Force South (JIATF-S) Key West, Florida**

- **In FY 2014, Joint Interagency Task Force South** contributed to the disruption of 158 metric tons of cocaine worth nearly \$3.2 billion wholesale. This represents 76 percent of the estimated cocaine flow directed towards the U.S. market. JIATF-S executed an integrated defense forward strategy that complimented the ongoing efforts at the U.S. Southwest Border. JIATF-S exercised tactical control (TACON) of U.S. and allied ships and Maritime Patrol Aircraft, along with the Forces Surveillance Support Center’s re-locatable over-the-horizon radar (ROTHR) to detect, monitor and support interdiction of illicit traffic.
- **Operation (OP) MARTILLO** led to the majority of JIATF-S interdictions. Begun in January, 2012, OP MARTILLO has resulted in the disruption of 400 metric tons of cocaine, and the seizure of \$14.4 million in bulk cash and 325 vessels and aircraft. This multinational operation is intended to deny the Central American littoral routes to illicit traffickers. Approaching its third anniversary, OP MARTILLO is achieving its desired effects of decreased trafficking in the Western Caribbean and Eastern Pacific littorals. This has driven increased activity in the Eastern Pacific non-littoral route, which, as a result of longer distances, provides additional time for U.S., allied and Partner Nation forces to respond once an illicit trafficking event is detected.
- **Operational Results and Impact:** The bilateral Air Bridge Denial Program with Colombia contributed to a significant reduction in illicit air traffic. JIATF-S documented a 68 percent decrease in illicit air tracks from South America to Central America (primarily Honduras) and detected only two flights into Haiti. In the maritime domain, JIATF-S assessed reductions of 73 percent and 42 percent, respectively, in activity along the Western Caribbean littoral and non-littoral trafficking vectors. JIATF-S also documented a significant decrease in trafficking via “go fast” boats using the littoral routes, which is consistent with the intent of OP MARTILLO. Eastern Pacific trafficking showed similar trends, with a 48% decrease in the littorals and a 38% increase in the non-littorals, including a recent increase in the use of routes south of the Galapagos.
- **Operation UNIFIED RESOLVE**, the counter illicit trafficking operation supporting Puerto Rico, has improved interoperability between JIATF-S, Coast Guard District 7, Coast Guard Sector San Juan, and the Customs and Border Protection (CBP) Office of Air and Marine’s

Caribbean Air and Marine Branch in Counter-Illicit Trafficking operations. Real-time information sharing improved OP UNIFIED RESOLVE effectiveness against movements of cocaine to Puerto Rico from the primary Hispaniola vector. This collaborative effort enhanced the effective sharing of resources in today's austere operating environment and resulted in interdiction of 15,342 kg of cocaine destined for Puerto Rico in FY14.

- **Role of Partner Nations:** Fifty six percent of JIATF-S disruptions happened as a result of Latin American partner nation participation. Additionally, 75 of the 204 (37 percent) illicit trafficking events disrupted by JIATF-S were a direct result of the participation of our international allies. The maritime contributions by the U.K., France, the Netherlands, and Canada continued to be significant and will be critical to future operations as U.S. Navy resources continue to be limited.
- **Counter-Transnational Organized Crime/Counter Network Operations:** While focused on its primary mission of detection and monitoring of illicit traffic, JIATFS established counter network and counter threat finance analysis cells to assist law enforcement agencies in dismantling the Transnational Criminal Organizations responsible for the production and shipment of narcotics and for undermining the stability and security of the region.

#### **Joint Task Force-Bravo Soto Cano Air Base, Honduras**

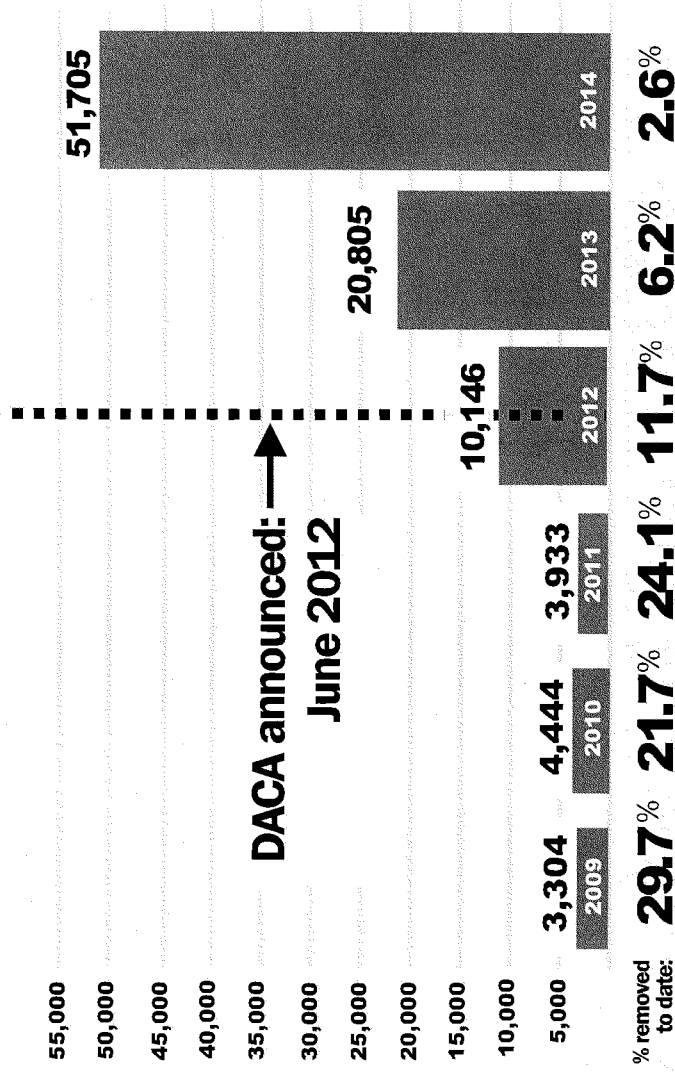
- **Joint Task Force-Bravo Summary:** Joint Task Force-Bravo (JTF-Bravo) is a forward-based, expeditionary joint task force operating in the USSOUTHCOM AOR. Stationed at the Honduran Soto Cano Air Base, JTF-Bravo manages the only strategic, all-weather day/night C-5 Galaxy-capable airfield in Central America. The JTF, in cooperation with our partner nations, executes operations and enables multilateral exercises in support of the USSOUTHCOM priorities of countering transnational organized crime (CTOC), humanitarian assistance/disaster relief (HA/DR), and building partner capacity (BPC) to promote regional cooperation and security in Central America. JTF-Bravo supports the USSOUTHCOM Commander's objectives in Honduras by executing assigned tasks within OPERATION ESCUDO UNIDO.
- **CTOC Operations:** At the request of the Government of Belize, JTF-Bravo provided aerial reconnaissance and air movement support for Belizean Defense Forces during two separate operations to eradicate 110,000 marijuana plants, 2000 lbs of processed marijuana and 35 lbs of seeds; destroying over 56 million dollars of profits. JTF-Bravo also participated in detection and monitoring operations off the Northeastern coast of Honduras to develop and train Fuerzas Especial Naval (FEN) boat crews, familiarizing them with communication and reporting fundamentals, illicit drug trafficking tactics, and vessel interception techniques. Finally, JTF-Bravo supported the Honduran Army's destruction of 10 illicit airfields in the Gracias a Dios Department by transporting almost 400 troops and 8,500 pounds of demolitions to damage airfields used by drug trafficking organizations.
- **HA/DR Response Operations:** At the request of the President of Honduras, and directed by USSOUTHCOM, JTF-Bravo delivered over 37,000 lbs of immediate lifesaving rations to isolated locations in GaD, which were devastated by severe flooding and heavy winds associated with Tropical Storm Hanna. JTF-Bravo executed 10 medical readiness training exercises, four mobile surgical team exercises, and weekly medical training missions in local

municipalities to improve expeditionary readiness and simultaneously provide medical care to CENTAM countries. Over the past year, the JTF treated 15,886 medical patients, 2,407 dental patients, and 779 surgical patients. JTF-Bravo routinely integrates its SOUTHCOM Situational Assessment Team (S-SAT) with regional partners to participate in natural disaster exercises. The JTF deployed its small response package to El Salvador as a part of Fuerzas Aliadas Humanitarias 2014 (FA-HUM 14), validating tactics, techniques, and procedures for response to natural disasters in the region.

- **BPC and Supporting Partner Nations:** JTF-Bravo conducted numerous BPC and PN supporting events. This included: deploying a Downed Aircraft Recovery Team (DART) to Guatemala to assist in recovering the wreckage from a helicopter crash on 20 August 2014; providing subject matter expertise leading to revision of the Guatemalan aviation safety and standards program; and facilitating the Department of Homeland Security (DHS) and Government of Honduras (GoH) repatriation of 85 Honduran families from the U.S. to locations throughout Honduras, by providing limited airfield support to DHS contracted aircraft. Additionally, JTF-Bravo firefighters conducted expertise exchanges with fire departments from Central America. The exchanges reinforced firefighting tactics, techniques, and procedures, enhancing the partner nation's ability to respond and control fire emergencies. The JTF also hosted 54 firefighters from the El Salvador Port Authority at Soto Cano Air Base to conduct annual firefighting certification. Finally, JTF-Bravo coordinated and hosted a Pediatric Disaster Management Course at Soto Cano Airbase, as well as the first ever Advanced Trauma Life Support course in Honduras. Both courses certified Honduran instructors in the respective specialty areas and helped improve Honduran medical capacity.

# UAC APPREHENSIONS

UNACCOMPANIED CHILDREN: HONDURAS, GUATEMALA, EL SALVADOR



U.S. Border Patrol, U.S. Customs and Border Protection.







**CWS Statement to the U.S. Senate Committee on Homeland Security and Governmental Affairs, regarding its hearing "Securing the Border: Understanding and Addressing the Root Causes of Central American Migration to the United States" Wednesday, March 25, 2015**

As the committee discusses the root causes of Central American Migration to the United States, Church World Service urges all members to consider the context of violence and poverty that are forcing children and families to flee from Guatemala, Honduras and El Salvador.<sup>1</sup> It is important to note that individuals are not only fleeing to the United States. There has been a 712% increase in asylum applications to nearby countries in the region, including to Nicaragua, which is the poorest country in the region, showing the desperation of individuals fleeing violence in the Northern Triangle. The Obama administration has responded to this increase in migration with a number of measures, including the "Plan for the Alliance for Prosperity in the Northern Triangle," which names four principal pillars: creating economic opportunities, fostering human capital, addressing violence and strengthening institutions.<sup>2</sup> CWS urges the committee to focus on reforms that address impunity, complicity, the lack of secure protection programs, and poverty.

**Impunity, Complicity and the Lack of Secure Protection Programs**

This region is replete with corruption, human rights abuses by local authorities, militarization of the police, and weak institutions. All of these create environments of chaos, insecurity and vulnerability that force many to flee. In a recent report from the United Nations High Commissioner for Refugees (UNHCR) entitled "*Children on the Run*," 58 percent of children surveyed from Mexico and Central America were clearly in need of international protection. Child protection mechanisms in these countries are either non-existent, drastically under-resourced or lack implementation mechanisms to provide children the services needed for them to safely remain in their home countries. According to both international and U.S. law, many of these children should qualify for refugee status or asylum in the United States.<sup>3</sup> The combination of high impunity rates, military and police complicity with gang violence, and lack of secure witness protection programs mean that there is little to no recourse for victims and that, in fact, reporting crime can put individuals at further risk. Women's shelters in the region are also unable to provide adequate protection. As an example, there are only three women's shelters in Honduras, and two are routinely invaded by police and military personnel who violate the women there. These realities often mean that migration is the only option that individuals have to protect themselves. Solutions will require multifaceted police and justice system reforms and clear accountability demands from donor countries.

**Poverty and lack of opportunity**

CWS also urges members to consider the systematic and cyclical links between violence, lack of infrastructure and poverty. The dire economic situation and lack of employment opportunities force people to pursue migration as their only means to survive and provide basic necessities for their families. CWS urges the committee to support the State Department's investment in poverty reduction programs that provide job training and gang prevention programs for youth in communities most impacted by the control of gangs and organized crime groups, as a strategy to address the root causes of Central American Migration to the United States. Also, the way that deportations are conducted from both the United States and Mexico are leading to re-migration. Deportees are often even more vulnerable than when they initially fled the Northern Triangle, due to debt incurred along the journey, unemployment, the lack of housing, and the increased risk of threats, violence and extortion by gangs preying upon their situations. These realities encourage and in many cases necessitate their re-migration, creating a cycle of desperation. CWS urges the committee to work with the Department of State to expand reintegration and job training and placement programs for individuals who do not qualify for protection or status in the United States and are subject to deportation.

Without addressing the violence, insecurity, human rights violations and abuses by local police, migration from the Northern Triangle will continue. CWS urges the committee to explore ways to alleviate the root causes of impunity, complicity, the lack of protection infrastructures, and poverty that force individuals to flee for their lives. CWS is committed to working with both the House and Senate to pursue reforms that will provide long-lasting solutions to enhance the stability of the region and the protection of vulnerable populations.

<sup>1</sup> UNHCR "Children on the Run", July 9, 2014. <[www.unhcr.org/sites/default/files/1\\_UAC\\_Children%20on%20the%20Run\\_Full%20Report.pdf](http://www.unhcr.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf)>.

<sup>2</sup> Frank De Waegh, Jesuit Conference National Advocacy Office, "Central America's Northern Triangle: Complex Solutions Needed," January 18, 2015. <<http://migrationsolidarity.net/blog/2015/01/18/central-americas-northern-triangle-complex-solutions-needed/>>.

<sup>3</sup> UNHCR "Children on the Run", July 9, 2014. <[www.unhcr.org/sites/default/files/1\\_UAC\\_Children%20on%20the%20Run\\_Full%20Report.pdf](http://www.unhcr.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf)>.



March 25, 2015

Mr. Chairman, Members of the Senate Committee on Homeland Security and Governmental Affairs, thank you for the opportunity to submit a statement on today's hearing on "Securing the Border: Understanding and Addressing the Root Causes of Central American Migration to the United States."<sup>1</sup>

**As the UN Refugee Agency, The United Nations High Commissioner for Refugees (UNHCR) has expertise in the area of protecting persons displaced by violence and conflict.** UNHCR recognizes the enormous challenges facing the U.S. and other countries as a result of the recent large displacement of people from the Northern Triangle region of Central America. We offer the following four points to inform the response to the refugee dimension of the flow:

- Given our mandate to ensure the protection of those fleeing for their lives and freedoms, UNHCR undertook a study of the situation facing unaccompanied children (UACs) from El Salvador, Guatemala and Honduras in order to understand the root causes that have led to the increase in arrivals from these countries. UNHCR interviewed 404 children from these countries to understand why children are leaving their homes. They gave multiple reasons for leaving, including violence, family, opportunity, and improved living conditions - but fear of violence and the conviction that they could not be protected from their own governments was the tragic, common factor for a majority of those interviewed. Shockingly, 58% of the children cited violence in their home countries as at least one key reason for leaving. The narrative of migration in the region has changed given the new dynamic of forced displacement.
- This is a regional humanitarian situation that requires a regional humanitarian response.
- Unaccompanied children and families who fear for their lives and freedoms must not be forcibly returned without access to proper asylum procedures. UNHCR calls on all countries in the region to uphold their shared responsibility to identify and protect displaced children, families or adults who are forcibly displaced by violence. This is critical over both the short and long term, as governments implement solutions to address forced displacement and the dire country conditions causing it.
- Reception of asylum-seekers - particularly children and families fleeing violence - must focus on protection and not on deterrence.

**The dynamics of displacement are changing, including in the Americas**

Today, the world is facing the largest numbers of forced displacement since World War II. In 2013, more than 51 million women, men and children were forced from their homes by conflict and violence. New forms of violence have emerged that threaten the safety and security of individuals, families and communities. Non-state actors are increasingly the drivers of displacement, exercising geographic control and operating beyond the law. Transnational organized armed groups like Boko Haram and ISIS now terrorize local populations and act beyond the control of governments in their respective regions. These changes are clearly reflected in the Americas region, particularly in El Salvador, Guatemala and Honduras, countries collectively known as the Northern Triangle of Central America, where organized armed criminal actors exert ever more violence and control.

<sup>1</sup> Similar testimony was submitted by UNHCR to the Senate Foreign Relations Committee hearing on "Dangerous Passage: Central America in Crisis and the Exodus of Unaccompanied Minors" (June 18, 2014) and the House Judiciary Committee hearing on "An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors" (June 25, 2014).

As the UN Refugee Agency, it is our mandate from the international community to understand the dynamics of this displacement, and to help governments identify and protect persons who flee persecution. We carry out this important role around the world. For example, we are currently helping governments respond to major refugee emergencies within and around countries such as Syria, South Sudan, Central African Republic and once again Iraq.

Each year, many asylum-seekers from across the globe arrive in the United States in search of safety. UNHCR's role in the U.S. is the same as it is in other industrialized countries of asylum: to support governments to ensure that the international protection systems in place identify and respond to the needs of those who are fleeing persecution and torture. This can be a particular challenge in the context of mixed migration flows of refugees and other migrants. In our supportive function, UNHCR works with U.S. government adjudicators and policy makers in their efforts to prevent *refoulement*, or the unlawful return of a person to a place where they fear for their lives and freedoms. We also support other governments in the Americas region and elsewhere with the same goals.

In late 2011, UNHCR began noting increases in the numbers of UACs from the Northern Triangle countries arriving not only in the United States, but also in other countries in the region. Given our mandate, we set out to try to understand why. After conducting in-depth, child-sensitive interviews with 404 unaccompanied children from the Northern Triangle and Mexico held in U.S. federal custody, UNHCR found in March 2014, documented in our report *Children on the Run*, that while the children gave varying and overlapping reasons for leaving, a stunning 58% of them had left due to violence. The children told us that threats and direct acts of violence are primary drivers forcing children and adults from the Northern Triangle to leave their homes in search of safety. This has completely changed the narrative of migration in the region.

The children interviewed by UNHCR shared stories of violence, threats, intimidation and abuse – experiences that, like for so many children in situations of widespread violence and conflict, they should never have to face.

*My grandmother wanted me to leave. She told me: "If you don't join, the gang will shoot you. If you do join, the rival gang will shoot you—or the cops will shoot you. But if you leave, no one will shoot you."*

- Kevin, Honduras, Age 17

*Gangs in a nearby neighborhood wanted to kill me and some other people. They wanted me to give them money, but what money was I supposed to give them? I didn't have any. They asked me a bunch of questions, like who was my father, and who was my family. I told them my father was dead. They told me to say goodbye because I was going to join my father. They asked me if I knew who they were, if I could identify them. I said no, because I knew if I said yes they would kill me. They held my cousin and me for three hours, tied up. My cousin was able to untie the rope and he helped me untie mine. We heard gun shots and we ran. They kept looking for us, but we escaped.*

- David, Guatemala, Age 16

*I am here because the gang threatened me. One of them "liked" me. Another gang member told my uncle that he should get me out of there because the guy who liked me was going to do me harm. In El Salvador they take young girls, rope them and throw them in plastic bags. My uncle told me it wasn't safe for me to stay there. They told him that on April 3, and I left on April 7. They said if I was still there on April 8, they would grab me, and I didn't know what would happen. . . . My mother's plan was always for the four of us – her, my two sisters and me – to be together. But I wasn't sure I wanted to come. I decided for sure only when the gang threatened me.*

- Maritza, El Salvador, Age 15

As the above examples illustrate, children's stories were as heartbreaking as they were terrifying. Young girls told of being forced into sexual servitude by organized armed criminal actors – referred to as "gangs" or "*maras*" – under

the threat of torture and death. Boys spoke of not being allowed to leave their homes and attend school because they had refused to join these *maras* and they knew the consequences of that refusal all too well. Many had been targeted directly by the violence; others had seen their family and friends fall victim. These stories play out in news accounts as well, with reports of mass graves of mutilated boys' bodies and of girls found in bags in ditches in the countries' largest cities. Each child's story was unique, but so many shared similar threats, similar intimidation and similar fears.

These findings were reinforced by other trends in the region. Together, El Salvador, Guatemala and Honduras constitute the most dangerous region in the world not involved in an active conflict. Human trafficking and exploitation is rampant. The region has one of the highest rates of femicide – targeted killing of women and girls – in the world. Asylum applications by citizens of the Northern Triangle filed in countries other than the U.S. – i.e. Mexico, Belize, Nicaragua, Costa Rica and Panama – have increased 712% since 2008. Compare that to Nicaragua, the second poorest country in the Western Hemisphere though with a much lower homicide rate. Nicaragua currently produces very low numbers of asylum-seekers in the region. Rather, it has now become a country of asylum for its neighbors, receiving a 238% increase in asylum applications from the Northern Triangle countries in recent years.

The refugee dimension has also been clearly articulated by the U.S. government in studies that show growing violence and insecurity in El Salvador, Guatemala and Honduras has been a central push factor. In February 2015, the U.S. GAO released a study on the increased migration of UACs from the Northern Triangle countries.<sup>2</sup> The study cited crime and violence, along with economic concerns, as the top concern leading to increased migration of UACs to the U.S. Similarly, a February 2015 report by the Congressional Research Service<sup>3</sup> also identified "poor security and socioeconomic conditions...high violent crime rates, [and] significant transnational gang activity," as central push factors and noted that "high levels of inequality are strongly correlated with high levels of violence."<sup>4</sup>

U.S. government data further confirms the refugee dimension of this flow, and illustrates the need to assess individuals for protection concerns. USCIS statistics show that, on average, 58% of UAC who apply for asylum have won relief and 70% of families in expedited removal proceedings have established credible fear of persecution. The federal government's creation of The Central American Minors (CAM) Refugee/Parole Program in El Salvador, Guatemala, and Honduras, which enables certain lawfully present parents in the U.S. to request access to the refugee program for their children, lends further credence to the fact that violence and persecution in the region is a primary precipitant of increased migration from Central America.

#### **This is a regional humanitarian problem that needs a regional humanitarian solution**

While the U.S. received the vast majority of asylum claims from the Northern Triangle, forced displacement from these countries is clearly felt elsewhere in the region, as detailed above. Mexico and Guatemala in particular have seen a significant increase in Central American asylum-seekers transiting to the U.S. Given the regional nature of this displacement, the U.S. cannot and should not bear the burden of addressing the situation alone. UNHCR remains ready to support the U.S. and other asylum countries in the region to enhance protection systems throughout the region and to provide protection to those whose lives and freedoms are under threat. UNHCR hopes that the U.S. will employ its regional leadership role to encourage identification, screening and access to asylum in every country where displaced Central Americans are seeking refuge. Care must be taken by countries throughout the region to ensure that domestic and regional enforcement structures prioritize the right of individuals to seek asylum and uphold the principle of *non-refoulement*.

<sup>2</sup> Available at <http://www.gao.gov/assets/670/668749.pdf>

<sup>3</sup> Available at <http://fas.org/sgp/crs/homesecc/R43702.pdf>

<sup>4</sup> Ibid, pg. 16.

**Unaccompanied children and families who fear for their lives and freedoms must not be forcibly returned without access to proper asylum procedures**

At the core of refugee protection is the prohibition on returning refugees to persecution. This prohibition, known as the principle of *non-refoulement*, is the fundamental obligation of States parties to the 1951 Convention relating to the Status of Refugees<sup>5</sup> and/or its 1957 Protocol,<sup>6</sup> and one that is binding on the U.S.<sup>7</sup> A critical first step in complying with this obligation is to ensure that asylum-seekers are identified, screened and given full and meaningful access to asylum. This is particularly critical for children, whose age and comprehension capacity limits their ability to engage protection systems on their own.

With the knowledge that there are a high number of potential claims for international protection among the population of individuals arriving from Central America, it is critical that all arriving individuals and families – including those who are nationals of Mexico – are identified, screened and given access to the U.S. asylum system, if warranted.<sup>8</sup> Strengthening identification procedures in the U.S. and all other neighboring countries is the critical first step in a humanitarian response to ensure that those who fear persecution are not turned away.

**Reception of asylum-seekers must focus on protection and not on deterrence**

As a global leader in refugee protection, the U.S. has long led by example in encouraging other countries in the region and around the world to develop and strengthen their own protection systems. A crucial element in responding to the current humanitarian situation is to ensure that unaccompanied children, families and all other individuals crossing the southern border are treated with dignity and respect. The solution to a spike in arrivals is not to make seeking protection more difficult.

The right to seek asylum is a protected right reflected in U.S. law. Seeking asylum is not a crime, nor is it a prohibited act. Policies and practices designed to deter those fleeing persecution from seeking safety and protection – such as the current U.S. government policy of using family detention to deter women and children from seeking asylum – are contrary with both the letter and the spirit of the 1951 Refugee Convention and its 1967 Protocol as well as other international human rights instruments.

UNHCR and others have long-noted that no empirical evidence supports the assumption that immigration detention deters irregular migration, or that it discourages people from seeking asylum.<sup>9</sup> In 2006, UNHCR noted, “Critically, threats to life or freedom in an individual’s country of origin are likely to be a greater push factor for a refugee than any disincentive created by detention policies in countries of transit or destination.”<sup>10</sup> In Australia, for example, thousands of asylum-seekers continue to arrive to the country’s shores, despite adoption of increasingly harsher detention practices. Unaccompanied children and families with children must be treated with dignity and provided age-appropriate reception conditions during their asylum procedures. This includes accessing more humane and cost-effective alternatives to detention arrangements.

<sup>5</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.refworld.org/docid/3be01b964.html>

<sup>6</sup> UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: <http://www.refworld.org/docid/3aef6b3ae4.html>

<sup>7</sup> The United States of America is a state party to the 1967 Protocol to the 1951 Convention on the Status of Refugees. See [https://treaties.un.org/Pages/ViewDetails.aspx?src=UNTS&tabid=2&mtidsg\\_no=V-5&chapter=5&lang=en#Participants](https://treaties.un.org/Pages/ViewDetails.aspx?src=UNTS&tabid=2&mtidsg_no=V-5&chapter=5&lang=en#Participants).

<sup>8</sup> Given that the families who are arriving in greater numbers from the three Northern Triangle countries have children

<sup>9</sup> UN High Commissioner for Refugees (UNHCR), *Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, p. 1, April 2011, PPLA/2011/01.Rev.1, available at: <http://www.refworld.org/docid/4dc935fd2.html>.

<sup>10</sup> *Ibid.*

**Conclusion**

The increase in arrivals of Central American asylum-seekers along the southern border – in particular families and unaccompanied children – has no doubt placed great pressure on the U.S.’ long-standing commitment to protecting those who seek safe haven. Understanding what has propelled these children and families from their homes, providing appropriate reception conditions and ensuring protection for those who cannot return home is fundamental to meeting U.S. obligations under both domestic and international law to protect refugees and other vulnerable persons. Perhaps more importantly, it is consistent with the U.S.’ long-standing leadership as a beacon of hope to persecuted men, women and children around the world. UNHCR stands ready to support the U.S. and other countries in the region in providing protection to children and families on the run.

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**Post-Hearing Questions for the Record  
Submitted to the Honorable Alan Bersin  
From Senator Rob Portman**

**“Securing the Border: Understanding and Addressing the Root Causes of Central  
American Migration to the United States”  
March 25, 2015**

**Question:** Following implementation of Deferred Action for Childhood Arrivals (DACA) in June 2012, the number of unaccompanied alien children (UAC) apprehended from El Salvador, Guatemala, and Honduras has significantly increased each year. CBP records show that from FY2013 to FY2014, the arrival of UAC from El Salvador increased by 173.86 percent, for Guatemala by 111.42 percent, and for Honduras by 170.40 percent. In FY2014, CBP apprehended more UAC than in any of the previous five years and more than three times as many as in FY2009. According to the Congressional Research Service, the number of UAC apprehended at the Southwest border by CBP in FY2014 reached a peak of 68,541.

What are the central causes of the influx of UAC at the Southwest border?

Do you believe that the number of UAC apprehended in 2014 was an anomaly?

Is the number of UAC apprehended at the Southwest border expected to continue to remain above 2012 and 2013 levels in FY2015?

**Response:** There is likely no single factor responsible for the number of UC and families crossing the Southwest Border. See U.S. Gov’t Accountability Office, Rep. No. GAO 15-362, *Information on Migration of Unaccompanied Children from El Salvador, Guatemala, and Honduras* (Feb. 27, 2015). For example, gang violence and organized crime have proliferated in these countries, disproportionately victimizing children and adolescents. We have launched significant public outreach and media campaigns aimed at countering misinformation about potential lawful status in the United States. As a result of these and other efforts, we do not currently expect the number of unaccompanied children (UC) from Central America to reach FY2014 levels.

UC apprehensions across the southwest are down significantly as well. During the first six months of Fiscal Year 2015, UC apprehensions along the Southwest Border were 15,627, a 45 percent decrease when compared to the same period during last year’s increase in arrivals. We assess that Central American UC migration likely will fall below FY14 levels, but it is unknown at this time how it will compare to prior years.

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| <b>Question#:</b> | 2                                                                                                                    |
| <b>Topic:</b>     | DACA 2                                                                                                               |
| <b>Hearing:</b>   | Securing the Border: Understanding and Addressing the Root Causes of Central American Migration to the United States |
| <b>Primary:</b>   | The Honorable Rob Portman                                                                                            |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                                                                           |

**Question:** According to DHS, certain people who came to the United States illegally as children and meet several guidelines may request consideration of deferred action under DACA for a period of two years, subject to renewal. They are also eligible for work authorization.

If UAC from Honduras, Guatemala, and El Salvador previously entered the United States illegally and meet the DACA guidelines, are they able to request DACA?

Have UAC or others from Honduras, Guatemala, and El Salvador who entered the United States illegally requested DACA?

Do you agree that DACA allows people who entered the United States illegally but meet the DACA requirements to remain in the United States for an extended time under the program?

**Response:** No, UC from Honduras, Guatemala, and El Salvador who were not previously present in the United States and entered the United States last year would not be eligible to request deferred action under the 2012 Deferred Action for Childhood Arrivals guidelines. Those guidelines are limited to individuals who were physically present in the United States on June 15, 2012, who entered the United States as children prior to June 15, 2007, and who have been continuously residing in the United States since that time. DACA involves a case-by-case determination that DHS will not pursue removal action against eligible individuals for an initial period of time. Deferred action under DACA does not confer lawful status, and it can be revoked at any time. If individuals are issued a notice to appear in immigration court proceedings, their DACA and work authorization are terminated. Initial and renewal DACA determinations include biometric and biographic background checks to allow continued monitoring of individuals residing in the United States under the deferred action guidelines.



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| <b>Question#:</b> | 3                                                                                                                    |
| <b>Topic:</b>     | misconception                                                                                                        |
| <b>Hearing:</b>   | Securing the Border: Understanding and Addressing the Root Causes of Central American Migration to the United States |
| <b>Primary:</b>   | The Honorable Rob Portman                                                                                            |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                                                                           |

**Question:** It was stated that there is a misconception in Honduras, Guatemala, and El Salvador that children who enter the United States illegally will be allowed to remain in the United States.

How has this misconception been influenced by changes in U.S. immigration policy?

Is it possible that the administration's deferred action policies and use of prosecutorial discretion may incentivize migration from El Salvador, Guatemala, and Honduras?

What action has the administration taken to address this misconception prior to FY2014?

**Response:** Although violence in Honduras, Guatemala, and El Salvador— among the most dangerous countries in the world—is an important factor in assessing the cause of increased migration of UC and families, there is likely no single factor responsible. The growth in UC migration began before the DACA policy was announced in 2012.

The U.S. Government took a number of steps to respond to these issues, including:

- Launching significant public outreach and media campaigns aimed at countering misinformation about potential lawful status in the United States and communicating the dangers of sending UC on the long journey from Central America to the United States and of putting children into the hands of criminal smuggling organizations;
- Building additional detention capacity, including in Karnes County and Dilley, TX, for adults who cross the Southwest Border illegally with their children;
- Vigorously pursuing human smuggling organizations along the southwest border, and in Mexico and Central America;
- Opening new U.S. Customs and Border Protection (CBP) processing centers, increasing capacity to appropriately house children following apprehension prior to their transfer to the Department of Health and Human Services; and
- Proactively engaging Mexican and Central American immigration, political, and enforcement counterparts; and developing a “U.S. Strategy for Engagement in Central

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| <b>Question#:</b> | 3                                                                                                                    |
| <b>Topic:</b>     | misconception                                                                                                        |
| <b>Hearing:</b>   | Securing the Border: Understanding and Addressing the Root Causes of Central American Migration to the United States |
| <b>Primary:</b>   | The Honorable Rob Portman                                                                                            |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                                                                           |

America,” which balances three interrelated and interdependent objectives—to assist in building prosperity, governance, and security throughout the region.

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| <b>Question#:</b> | 4                                                                                                                    |
| <b>Topic:</b>     | illegal migrants                                                                                                     |
| <b>Hearing:</b>   | Securing the Border: Understanding and Addressing the Root Causes of Central American Migration to the United States |
| <b>Primary:</b>   | The Honorable Rob Portman                                                                                            |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                                                                           |

**Question:** At a March 17, 2015 hearing held before this committee titled Securing the Southwest Border: Perspectives from Beyond the Beltway, it was stated that drug cartels and human traffickers at border towns in Mexico can influence the time and location of illegal migrants crossing the Southwest border into the United States, which can be used to strain Border Patrol resources and thus decrease the probability that drug and sex traffickers crossing the border will be detected and apprehended.

Can an influx of illegal migration into the United States at the Southwest border strain the resources of the Department of Homeland Security, Department of Health and Human Services, and Department of State?

**Response:** We cannot respond for HHS or DOS. The Border Patrol's resources, and hold room capacity in particular, may be strained during times of an influx. USBP has protocols in place to quickly recognize and act to manage any such situation.

**Question:** Did the FY2014 influx of UAC strain resources?

**Response:** The FY2014 increase was unprecedented and resources were initially strained. The volume of unaccompanied children and the type of special measures required to care for and ensure the safety of such children required exceptional coordination efforts between DHS, the Department of Health and Human Services, and many other agencies in the Unified Coordination Group. Through a coordinated, rapid response, the agencies brought appropriate resources online using a Whole-of-Government approach so that DHS was able to appropriately address the increase of UC arrivals, as well as remain focused on its border security mission.

**Question:** Do you agree that drug cartels and human traffickers can influence the time and location of migrants crossing the Southwest border?

**Response:** There has been reporting that drug smugglers have redirected human smuggling away from drug smuggling routes. CBP has not seen evidence of regular or sustained involvement by drug trafficking organization (DTO) in the day-to-day operation of human smugglers; however, drug smugglers can facilitate or benefit from the alien smuggling organization's (ASO) operations, and, in some cases, may set parameters on whether, how, or where ASOs may operate.

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| <b>Question#:</b> | 4                                                                                                                    |
| <b>Topic:</b>     | illegal migrants                                                                                                     |
| <b>Hearing:</b>   | Securing the Border: Understanding and Addressing the Root Causes of Central American Migration to the United States |
| <b>Primary:</b>   | The Honorable Rob Portman                                                                                            |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                                                                           |

**Question:** If so, do you agree they do so strategically to purposely strain Border Patrol resources and improve the ability for drug and human traffickers to cross illegally into the United States?

**Response:** Smugglers have used various conditions and tactics to their advantage, such as orchestrating human smuggling events to divert law enforcement attention while drug loads or other contraband were smuggled during the diversion. CBP remains aware of these kinds of tactics, and adjusts resources accordingly to respond appropriately.

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|-------------------|----------------------------------------------------------------------------------------------------------------------|
| <b>Question#:</b> | 5                                                                                                                    |
| <b>Topic:</b>     | assistance                                                                                                           |
| <b>Hearing:</b>   | Securing the Border: Understanding and Addressing the Root Causes of Central American Migration to the United States |
| <b>Primary:</b>   | The Honorable Rob Portman                                                                                            |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                                                                           |

**Question:** Congress appropriated \$662.7 million in bilateral assistance for El Salvador, Guatemala, and Honduras, including USAID and State regional programs, from FY2012 to FY2014. This funding is in addition to millions of dollars in aid received by these countries from other programs and sources such as the Central American Regional Security Initiative (CARSI) and the Millennium Challenge Corporation (MCC). However, as of October 2014, USAID accounts for El Salvador, Guatemala, and Honduras show that over \$218.7 million appropriated during FY2013 and FY 2014 remained unspent. Despite this, the President's budget for FY2016 requested a total of \$1.005 billion for Central America.

Were there shortfalls present in program management or funding levels previously provided to address the root causes of migration from Central America to the United States? What shortfalls were experienced?

**Response:** The Department of Homeland Security was part of the process of determining a new strategy for U.S. engagement in Central America over the past year, which is the foundation of the FY2016 request by the President. This new strategy will broaden our security focus to include efforts to achieve sustainable improvements in prosperity and governance. We strongly support this approach as a vital component of our whole-of-government response to the issues in the region.

We defer to the Department of State for further details on appropriations.

**Question:** Were shortfalls in these programs attributable to funding levels or program management?

**Response:** We defer to the Department of State.

**Question:** Was all funding appropriated to the Department of Homeland Security to address the main causes of Central American migration to the United States spent in the previous three years?

**Response:** DHS had no funds appropriated to address the root causes of Central American migration. DHS, by statute, cannot provide foreign assistance. Any efforts DHS undertook in Central America were funded by the Department of State or the Department of Defense.

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| <b>Question#:</b> | 5                                                                                                                    |
| <b>Topic:</b>     | assistance                                                                                                           |
| <b>Hearing:</b>   | Securing the Border: Understanding and Addressing the Root Causes of Central American Migration to the United States |
| <b>Primary:</b>   | The Honorable Rob Portman                                                                                            |
| <b>Committee:</b> | HOMELAND SECURITY (SENATE)                                                                                           |

**Question:** What are the most significant changes or new initiatives the administration plans to implement in support of El Salvador, Guatemala, and Honduras to address the root causes of migration to the United States? Are any legislative changes required to address these problems?

**Response:** The U.S. Government has developed the U.S. Strategy for Engagement in Central America, that balances three interrelated and interdependent objectives: to assist in building prosperity, governance, and security throughout Central America. These objectives parallel the initiatives of the governments of El Salvador, Guatemala, and Honduras in their “Plan of the Alliance for Prosperity in the Northern Triangle,” which also focuses on regional challenges of economic growth and opportunity, citizen safety, and confidence in government institutions. This strategy, and other policy directives that guide inter-agency cooperation, will ensure that DHS plays a much more substantial role in planning U.S. government support for El Salvador, Guatemala and Honduras in the future. This is particularly true with Administration plans to target the root causes of migration tied to citizen security concerns – that high levels of violence in the region are affecting migration to the United States.

To specifically help combat trafficking of persons, DHS’s Science and Technology Directorate has developed a new Rapid DNA technology that allows officers to verify family relationship claims in the field at an accuracy of greater than 99.5% in less than 90 minutes.

**Questions for the Record Submitted to  
Deputy Assistant Secretary Francisco Palmieri by  
Senator Rob Portman (#1)  
Senate Committee on Homeland Security  
March 25, 2015**

**Question:**

What are the central causes of the influx of UAC at the Southwest border?

**Answer:**

These children migrate due to a complex series of factors. Driving much of this migration is a fear of violence in their home communities and a fear that criminal gangs will either forcibly recruit or harm them if they remain. We know, however, that this violence is only one of the underlying factors that contributed to the surge in the number of unaccompanied children arriving in the United States from Central America. Lack of economic and social opportunities and ineffective public institutions combined with high levels of violence to contribute to the out-migration we saw last year. The United States has been the primary destination of these migrants given the high percentage of children who have family already in the United States. These children, and their families, were often misled by smuggling organizations that provided false information about potential immigration benefits available to these migrants once they reached the

United States. We have taken, and continue to take, concrete steps to counter the spread of this misinformation by criminal networks.



**Questions for the Record Submitted to  
Deputy Assistant Secretary Francisco Palmieri by  
Senator Rob Portman (2)  
Senate Committee on Homeland Security  
March 25, 2015**

**Question:**

Do you believe that the number of UAC apprehended in 2014 was an anomaly?

**Answer:**

Migration by unaccompanied children (UACs) is not a new phenomenon. It has ebbed and flowed along predictable lines for some time. However, what has changed is the size of the migration and the source countries. In the past, most unaccompanied children migrating illegally to the United States were Mexican nationals. Vigorous enforcement of our laws, new forms of law enforcement partnership with Mexico through the Merida Initiative, and efforts by the Government of Mexico to address the factors driving such migration reduced the number of UACs from Mexico apprehended while attempting to enter the United States. This decline has been offset by an increase in UACs emigrating from El Salvador, Guatemala, and Honduras. While we have witnessed a steady increase in

migrants from Central America over the past several years, the numbers increased dramatically beginning last year.

We are working with our Central American partners to address the underlying factors driving migration. Our public messaging, which has been echoed by regional partners, ensures that potential migrants are aware of the dangers of the journey, are not misled by false notions smugglers spread about potential immigration relief if they reach the United States, and to make clear that Executive Action on Immigration does not apply to new arrivals. These efforts are paying off. In March 2015 there were 3,145 UACs apprehended at the border, down from 7,176 in March 2014.

**Questions for the Record Submitted to  
Deputy Assistant Secretary Francisco Palmieri by  
Senator Rob Portman (3)  
Senate Committee on Homeland Security  
March 25, 2015**

**Question:**

Is the number of UAC apprehended at the Southwest border expected to continue to remain above 2012 and 2013 levels in FY2015?

**Answer:**

In March 2015 there were 3,145 UACs apprehended at the border, down from 7,176 apprehended in March 2014. In the first three months of 2015 the number of UACs apprehended at the U.S. border has been lower than the same months in each of the previous two years. In January 2015 there were 2,121 UACs apprehended – the lowest number in a single month since July 2012. While the numbers in February and March have increased from the numbers in January, we believe this is a result of seasonal migration trends. Historically migration numbers have ticked upwards during the warmer, summer months and trend downwards in the colder, winter months.

In coordination with the Northern Triangle governments we launched public messaging campaigns to dissuade irregular migration and dispel any false notions smugglers spread about potential immigration benefits. Together with the Central American governments we are committed to

addressing the underlying factors driving migration in an effort to reduce outbound migration and to create a safe, prosperous environment in these countries where citizens will want to remain and can thrive.

**Questions for the Record Submitted to  
Deputy Assistant Secretary Francisco Palmieri by  
Senator Rob Portman (4)  
Senate Committee on Homeland Security  
March 25, 2015**

**Question:**

It was stated that there is a misconception in Honduras, Guatemala, and El Salvador that children who enter the United States illegally will be allowed to remain in the United States. How has this misconception been influenced by changes in U.S. immigration policy?

**Answer:**

While misperceptions of our immigration laws and policies and U.S. domestic discussions on potential changes to immigration law may have contributed to the increase in UAC migration last year, we have not seen a significant increase in migration in response to the President's executive actions on immigration. We worked with our Central American and Mexican counterparts to ensure the message was clear in their countries: these actions only apply to individuals who have resided in the United States for significant periods of time. These governments released their own public statements, and their leaders spoke out to ensure their citizens understand that these measures only apply to those individuals who have been in the United States for many years and not anyone who would potentially migrate after the announcement.

**Questions for the Record Submitted to  
Deputy Assistant Secretary Francisco Palmieri by  
Senator Rob Portman (5)  
Senate Committee on Homeland Security  
March 25, 2015**

**Question:**

Is it possible that the administration's deferred action policies and use of prosecutorial discretion may incentivize migration from El Salvador, Guatemala, Honduras?

**Answer:**

The children, and their families, who undertook the dangerous journey to the United States last year were often misled by smuggling organizations that provided false information about potential immigration benefits available to these migrants in the United States. We have taken, and continue to take, concrete steps to counter the spread of misinformation by criminal networks. To counter the false messages smuggling organizations spread, we and the Department of Homeland Security – along with Central American and Mexican governments – developed targeted public service announcements to better reach the population centers where many of these child migrants originate from.

Our embassies in Mexico and the Northern Triangle countries launched aggressive public outreach campaigns to counter these false messages and accurately portray the dangers of the journey. Our ambassadors and embassy officials constantly engage with media in these countries. Following last summer's surge of UACs, we funded reporting tours and Foreign Press Center briefings targeted at migrant communities in both the United States and Central America. These reporting tours brought Central American journalists to Customs and Border Patrol facilities on the border for discussions with Spanish-speaking DHS officials who can accurately explain U.S. immigration policy and emphasize the humane care and removal process for UACs. We believe that these efforts have successfully spread the message that the United States takes its commitment seriously to review individual claims and to offer appropriate protections where warranted under U.S. law. At the same time, the United States will continue to vigorously dispel rumors spread by smugglers about potential immigration relief, including permissions to stay, for migrants if they reach the United States.

**Questions for the Record Submitted to  
Deputy Assistant Secretary Francisco Palmieri by  
Senator Rob Portman (6)  
Senate Committee on Homeland Security  
March 25, 2015**

**Question:**

It was stated that there is a misconception in Honduras, Guatemala, and El Salvador that children who enter the United States illegally will be allowed to remain in the United States. **What action has the administration taken to address this misconception prior to FY2014?**

**Answer:**

The Department of State, including via our embassies, works with the Department of Homeland Security (DHS) to ensure populations in El Salvador, Guatemala, and Honduras are not misled by smuggling organizations about potential immigration benefits. Smuggling organizations misled children and their families, often providing false information about potential immigration benefits available to migrants once they reached the United States. While this may not have been a major factor driving irregular migration prior to 2014, the U.S. government has taken, and continues to take, concrete steps to counter the spread of this misinformation by criminal networks.



The U.S. government launched several information campaigns before the surge in the number of migrants in 2014 related to the dangers of the journey and migrants' rights. In 2006, DHS, supported by the Department of State, launched an initial campaign "No Mas Cruces en la Frontera" to highlight the dangers of the journey to the United States, particularly the security and safety risks migrants may face. Complementary to these efforts, in 2009, DHS, supported by the Department of State, began the "No Te Enganes" (Don't Be Fooled) campaign to inform migrants about the dangers of human trafficking and to help individuals avoid becoming a victim of false information spread by criminal organizations. Our embassies in the region amplified these messages with their own media outreach. These campaigns were used prior to the 2013 "Dangers of the Journey" campaign and our subsequent coordination with the Governments of Mexico, Guatemala, Honduras, and El Salvador on their own messaging to dispel misconceptions about U.S. immigration laws and policies and to underscore the danger of the journey.

In addition to these information campaigns, there have been ongoing international efforts to improve the coordinated response around these important issues. Beginning in 1996, the United States along with all other

North and Central American countries meet regularly to discuss ways to improve outreach to migrant populations in order to inform them about potential risks and to raise awareness of their human rights through the Regional Conference on Migration. Since 2010, our embassies in the Northern Triangle, through op-eds and other media outreach have amplified the International Organization for Migration's messaging campaigns to highlight the dangers of human smuggling and trafficking and to inform migrants of their rights and available services, in part to counter any misinformation that may be spread about these rights and services.

**Questions for the Record Submitted to  
Deputy Assistant Secretary Francisco Palmieri by  
Senator Rob Portman (#7)  
Senate Committee on Homeland Security  
March 25, 2015**

**Question:**

Were there shortfalls present in program management or funding levels previously provided to address the root causes of migration from Central America to the United States? What shortfalls were experienced?

**Answer:**

The U.S. government made security investments in Central America in prior fiscal years, but addressing the underlying causes of migration in Central America requires a more strategic and sustained effort.

Accordingly, the U.S. Strategy for Engagement in Central America calls for increased U.S. investment and engagement along three lines of action: promoting prosperity and regional economic integration, enhancing security, and promoting improved governance. Investments in these areas will advance an economically integrated Central America with effective and accountable institutions and will sustain our security investments.

The governments of El Salvador, Guatemala, and Honduras have shown a new sense of political will, demonstrating their commitment to our shared objectives. For example, the Guatemalan government requested renewal of the mandate of the UN-sponsored International Commission

against Impunity in Guatemala, which plays a crucial role in fighting corruption, through September 2017. Honduras will open a UN Office of the High Commissioner for Human Rights, which the United States is helping to fund, and passed a law to protect human rights defenders, which will benefit from funds generated by a security tax. El Salvador passed an anti-extortion law in March, which authorizes harsher sentences for violators and orders cell phone companies to block signals sent to prisons, and also passed an investment stability law that assures investors customs and tax regulations will not change over the course of their investments.

Finally, these governments made public, comprehensive commitments to improve the lives of their citizens in the Alliance for Prosperity Plan, unveiled on November 2014 at the Inter-American Development Bank, and in a subsequent March 3 joint statement with Vice President Biden. The strategy complements the priority objectives identified in the Alliance for Prosperity Plan, capitalizing on revitalized political will, a coordinated response by these three governments, and expanded investments in prosperity and governance to sustain prior U.S. investments in Central America.



**Questions for the Record Submitted to  
Deputy Assistant Secretary Francisco Palmieri by  
Senator Rob Portman (#8)  
Senate Committee on Homeland Security  
March 25, 2015**

**Question:**

Were shortfalls in these programs attributable to funding levels or program management?

**Answer:**

Last summer's surge in unaccompanied children and families from Central America was a sign that the serious and persistent challenges Central America has faced for years remain and, in some instances, are worsening.

The violence in Central America, along with a lack of economic growth and jobs, poor educational opportunities, weak government institutions, poverty, and social exclusion contributed to a significant increase in outbound migration.

Prior community-based crime prevention programs, which focus on the root causes behind citizen insecurity in neighborhoods, are producing positive results, including a reduction in violence and an increase in community participation in communities where programs operate.

However, the community-based interventions and other U.S. investments in security in Central America were too limited in scope and amount for the

desired, national-level impact. The U.S. Strategy for Engagement in Central America addresses long-standing challenges, including poverty and insecurity, by calling for expanded investments in prosperity and governance to complement our security efforts. Expanded investments along the strategy's lines of action will advance a secure, economically integrated Central America with effective, accountable institutions.

**Questions for the Record Submitted to  
Deputy Assistant Secretary Francisco Palmieri by  
Senator Rob Portman (#9)  
Senate Committee on Homeland Security  
March 25, 2015**

**Question:**

Was all funding appropriated to the Department of State and USAID to address the main causes of Central American migration to the United States spent in the previous three years?

**Answer:**

Our embassies in Central America, particularly in the Northern Triangle countries of El Salvador, Guatemala, and Honduras, are focused on increasing the pace of expenditures. In the second half of 2014, USAID reduced its pipeline in Central America by 34 percent and will continue to reduce pipelines through strategically designed awards. The Executive Director of the Department's Bureau of Western Hemisphere Affairs highlighted the issue for the Bureau of Administration so they could prepare options for quicker procurements and more contracting officers, and USAID Mission Directors have discussed the issue as well. As a result, the Bureau of International Narcotics and Law Enforcement Affairs is bundling multiple, smaller procurements into larger awards, and is holding monthly calls with embassies on each procurement. The Department and USAID are

already working on human capital plans to manage the increase in FY 2015 and the proposed increase in FY 2016 foreign assistance.

We are mindful of the funding pipelines for bilateral Central America accounts and the Central America Regional Security Initiative, and understand the concerns about requesting additional funding for Central America before we spend these pipelines. The Department and USAID are taking practical steps to expedite the provision of assistance. However, we do face challenges with embassy space and staffing, and seek Congressional support for robust State and USAID operations budgets.



**Questions for the Record Submitted to  
Deputy Assistant Secretary Francisco Palmieri by  
Senator Rob Portman (10)  
Senate Committee on Homeland Security  
March 25, 2015**

**Question:**

What are the most significant changes or new initiatives the administration plans to implement in support of El Salvador, Guatemala, and Honduras to address the root causes of migration to the United States? Are any legislative changes required to address these problems?

**Answer:**

The Administration's FY 2016 request, which supports the U.S. Strategy for Engagement in Central America, expands existing, successful security investments and includes new assistance for prosperity and governance objectives, as set forth in the strategy. In prior years, U.S. assistance for generating greater prosperity and improving the quality of democratic governance in Central America, particularly in El Salvador, Guatemala, and Honduras, was not sufficient to effect changes on a national level to sustain and complement our collaborative security programs. We must invest in these areas to advance an economically integrated Central America with effective and accountable institutions that can maintain better security investments. We believe these new investments will help create a prosperous, secure environment where citizens can remain and thrive in their

home country. Accordingly, we seek Congressional support of the full request.

Under the new governance objective, we will address chronically low tax revenue collection. In Honduras, while USAID is working at the subnational level on management of government resource collection and expenditures, the Millennium Challenge Corporation (MCC) is working at the national level, seeking to make the management of government finances more efficient and transparent through the MCC's threshold program. Also in Honduras, USAID and MCC are coordinating closely with the Department of the Treasury (Treasury) to conduct a financial management assessment to determine the best investment of resources. In Guatemala, USAID will be working at the municipal level to help local governments generate and manage their own financial resources, complementing the work of the recently signed MCC threshold program (which, among other objectives, is designed to increase the availability of revenues by improving the efficiency of tax and customs administration) and on-going Treasury programs. In El Salvador, USAID will deepen existing work to improve tax collection while also helping improve the management of public expenditure systems under the Partnership for Growth framework.

Under the new prosperity objective, USAID will work with governments implement trade reforms that reduce the cost of regional trade; spur job creation by reducing the time and cost of registering businesses and helping small businesses grow through access to loan guarantees; and educate and train youth and other marginalized populations to be better prepared to enter the workforce.

The Bureau of International Narcotics and Law Enforcement Affairs (INL) and USAID are also pioneering an innovative “place-based strategy” for crime and violence reduction in Central America. The strategy combines prevention programs with law enforcement activities to reduce and prevent violence by focusing on the most at-risk communities and at-risk people, who are identified through data collection and analysis. U.S. and host nation officials work with stakeholders to deliver targeted prevention programs and law enforcement interventions that respond to empirically-identified risk factors for homicide and other criminal activity.

INL will also continue to work with host nations to expand one of its most successful programs in the region, the Model Police Precinct (MPP) program. MPPs emphasize community engagement and crime prevention through the use of intelligence gathering, targeted investigations, and community involvement. The existing MPP programs in Guatemala, El

Salvador, and Honduras contributed to significant decreases in homicide and other crime rates in neighborhoods the MPPs serve. In response to high-demand from local leaders, INL plans to expand the number of MPPs across the region to about 120 by 2017.

## **SECURING THE BORDER: DEFINING THE CURRENT POPULATION LIVING IN THE SHADOWS AND ADDRESSING FUTURE FLOWS**

**THURSDAY, MARCH 26, 2015**

U.S. SENATE,  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:02 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Lankford, Ernst, Carper, and Peters.

### **OPENING STATEMENT OF CHAIRMAN JOHNSON**

Chairman JOHNSON. This hearing will come to order.

I want to wish everybody good morning and welcome. Thank you for your time and effort and your willingness to come in here and testify and lay out the reality of the situation.

This is our fourth hearing in a series, and we will continue this, because the problem of trying to secure our border, trying to fix a broken immigration system, is pretty complex and the reality is actually quite difficult to describe. So, what we are trying to do is kind of a step by step approach here, and each one of these hearings is trying to focus on one of the issues, one component of the problem, trying to lay out that reality.

Today's hearing really is about defining the current population of people in this country illegally. I think we all zero in on that 11 to 12 million person figure. But, what are they doing? Where did they come from? Where are they living now? Who is working? How much are they making?

Rather than me continue to talk about it, I have seen the testimony and there is going to be a lot of information that will be revealed here today, so I guess I would rather just kind of leave it up to the witnesses and turn it over to our Ranking Member and then hop into the testimony.

### **OPENING STATEMENT OF SENATOR CARPER**

Senator CARPER. Thanks, Mr. Chairman.

Thanks to all of you for joining us today and for your preparation and for your willingness to respond to some of our questions.

Mr. Chairman, I want to thank you for calling the hearing. Too often, border security discussions begin and end with how to create more and better barriers at our Southern Border. We have been

down there recently. I have been down all along the borders over several years and have a lot of ideas we talked about, and the Chairman has a number of ideas. We agree on a bunch of them about how to better secure our borders, and there are a lot of things we can do, are doing, and I hope we will do more.

But, I think, as we look deeper, we need to ask maybe three key questions, and one of those, as the Chairman has said, is basically who are the undocumented individuals that are living here? Give us some idea who they are. How and why does this undocumented population, why do these folks come to our country? And, also, what is a pragmatic way forward for these individuals and for our country?

Finding the answers to these questions will help us better secure our borders and also finally address the immigration issues that Congress has been debating for a number of years now. I hope that we will actually address it. We tried to in the Senate, as you know, a year and a half ago.

But, we are told there are roughly 11 to 12 million folks that are here living in the United States without permission. We probably do not know as much about them as we would like, but some things are pretty clear.

Not all, but most of these individuals are productive, law abiding members of our communities. Indeed, some of them are children or young adults who literally do not remember any other home. Some of them do not even know they were born in another country. Many others are parents of U.S. citizens.

Second, for all of the focus on unauthorized entry along our Southern Border, experts believe that close to half of the undocumented population entered our country legally and then overstayed their visa or violated its terms. I think maybe the number is about 40 percent who were legal when they came here. They just continued to stay until they were not.

That brings us to my third point, and that is jobs. Jobs are why the lion's share, not all, but the lion's share of undocumented immigrants came to the United States in the first place, and it is why a lot of them choose to stay. Some of them, frankly, have a hard time getting out of here once they get here, so that is a challenge. Some of them, as the Chairman and I have talked about in our other hearings this week, some of them like to come here and work for a while and be able to go back and forth. We are interested in exploring how that might be part of an immigration reform bill that we take up.

But, we need to take a hard look at our labor needs and provide adequate ways for immigrants to work here legally when we do need their help, and also to make sure that when people come here to get advanced degrees, that instead of going back home and competing against us, we find a way for them to stay here and be part of making our Nation more economically robust.

But, I think all three of these factors point in one direction, and that is comprehensive immigration reform, not amnesty, not just you are here so we are going to make you citizens. I am not interested in doing that, and I do not think many of us are.

Congress needs to begin a new and real debate on a comprehensive and thoughtful immigration policy for the 21st Century. First,

we need a policy that is fair, one that will significantly reduce our Nation's budget deficit and one that will strengthen our economic recovery that is now underway. And, that policy must also continue to slow the flow of undocumented immigrants to our borders with Mexico and allow those living in the shadows to step forward, undergo background checks, demonstrate proficiency in English, remain gainfully employed, stay out of trouble, pay a fine, and contribute to our Nation in lawful ways.

Last Congress, two-thirds of the Senate came together and overwhelmingly passed such a measure. In fact, one of the co-authors was a member of our Committee, Senator McCain. It was not perfect, but it took significant steps to try to fix our badly broken immigration system while reducing our deficit by nearly \$1 trillion over the next 20 years and increasing our gross domestic product (GDP) over the next 20 years by some 5 percent. Had it been enacted, it would also have improved our security, in part by making it easier for border security officials to focus on the people or things that pose a true risk, such as the transnational threats that we heard about earlier this week.

I know that some of my colleagues would rather focus on one or two pieces of the immigration and border safety puzzle, for example, how many Border Patrol Agents we should hire, how much more fencing we should build along our borders. Those are legitimate questions. But, the issues and challenges that we have been discussing in these hearings are more complex than that and they certainly cannot be solved just by providing more security. They can be solved, in part, by providing much smarter security, a lot of force multipliers at the ports of entry (POE) and also between the ports of entry that we have talked about in previous days.

But, I continue to believe our best hope for progress is trying to tackle several of these areas in a comprehensive way. Let us try to do all the above. Again, the bill the Senate passed two years ago was not perfect, but it was a good start and something that members of both parties were able to come together around, and I hope we can recapture that spirit and get to work on a bill soon—not this week, but soon.

I also think we must look beyond our border and try to support efforts to address the root causes that are pushing some people to our country, and particularly dangerous and sometimes desperate circumstances that some Central Americans face, as we heard again yesterday.

With that, I look forward to the hearing, Mr. Chairman. Thanks for all these hearings this week. I think it has been enormously helpful for us and, hopefully, it will enable us to provide leadership for our country.

Chairman JOHNSON. Well, thank you, Senator Carper. I think you can tell by the emphasis we are putting on border security and our immigration system, that this is a top priority of this Committee and I want to work with you and start working toward some solutions to provide greater security and solve some of these problems.

I guess as is some of my tradition, I have a written opening statement for the record<sup>1</sup> that I would like to introduce, without objection. I have my fingers crossed here.

Senator CARPER. OK.

Chairman JOHNSON. OK, thanks. [Laughter.]

And, I have a chart.<sup>2</sup> It is just displayed over there. Every Senator has one by their desk, but it is just very quickly laying out currently where we think the population of the undocumented population is, and you can see California has the largest population, then Texas, then Florida, New York, New Jersey, Illinois, Georgia, 400,000. Then it drops off pretty quickly. We have a complete list, as well. It is just, again, trying to lay out where they are, and that is really what I am looking forward to in the testimony.

It is the tradition of this Committee that we swear witnesses in, so if you would stand up and raise your right hand.

Do you swear the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. PASSEL. I do.

Mr. GARZA. I do.

Ms. ZAVODNY. I do.

Mr. JOHNSON. I do.

Mr. ROSENBLUM. I do.

Chairman JOHNSON. Thank you.

Our first witness is Jeffrey Passel. Mr. Passel is the Senior Demographer at the Pew Research Center's Hispanic Trends Project in Washington, DC. Mr. Passel has developed measures of immigration trends, especially estimates of the unauthorized immigrant population and components of change. The previous positions include Principal Research Associate at the Urban Institute from 1989 to 2005 and various positions at the Census Bureau from 1974 to 1989. Mr. Passel.

**TESTIMONY OF JEFFREY S. PASSEL, PH.D.,<sup>3</sup> SENIOR DEMOG-  
RAPHER, HISPANIC TRENDS PROJECT, PEW RESEARCH CEN-  
TER**

Mr. PASSEL. Chairman Johnson and Ranking Member Carper, thank you for the invitation to testify. I must say, this is the first time I have had to swear to the truth of my estimates, but I will take that— [Laughter.]

Chairman JOHNSON. We will cut you a little slack. [Laughter.]

Mr. PASSEL. Since the Great Recession began in 2007, there have been some marked shifts in the unauthorized immigrant population. This group peaked at over 12 million in 2007, having grown steadily by about half-a-million per year from 3.5 million in 1990. After 2007, the trend changed sharply as the numbers dropped by almost one million over the next 2 years, to 11.3 million in 2009. Since then, the unauthorized immigrant population has remained essentially unchanged. The number coming each year has plummeted, but arrivals and departures are roughly in balance.

<sup>1</sup> The prepared statement of Senator Johnson appears in the Appendix on page 813.

<sup>2</sup> The chart referenced by Senator Johnson appears in the Appendix on page 906.

<sup>3</sup> The prepared statement of Mr. Passel appears in the Appendix on page 816.



The six States with the largest unauthorized immigrant populations saw their numbers grow after 1990, but their share of the total dropped from 80 percent to 60 percent in 2007. In the rest of the country, the unauthorized immigrant population grew much faster and increased roughly seven-fold, from about 700,000 to 4.7 million in 2007.

The stable numbers since 2009 mask some important regional variations. The unauthorized immigrant population rose in seven States, largely on the East Coast but including Nebraska and Idaho, and the numbers fell in 14 States spread around the country: six in the West, three in the South, three in the Midwest, and two in the Northeast. Many of these trends and shifts can be traced to the very large drop of unauthorized immigrants from Mexico, who numbered almost seven million in 2007, but 5.9 million in 2012.

Although unauthorized immigrants represent about 3.5 percent of the Nation's population, the 8.1 million unauthorized immigrant workers account for about 5 percent of the labor force. And, although the total number has dropped a little bit since 2007 overall, the number in the workforce has really not changed very much.

My written statement addresses labor force participation and State variation, but in the time I have left, I would like to focus on the industries where the immigrants work.

Because of lower levels of education and their status, unauthorized immigrants tend to hold low-skilled jobs and are over-represented in certain sectors of the economy. Three industry sectors combined have over half of all unauthorized immigrant workers: business services and related industries, leisure and hospitality, and construction. These three have less than a third of U.S.-born workers. Manufacturing and agriculture also have concentrations of unauthorized immigrants compared with natives.

If we look at this a different way, looking at the share of the workers in a particular industry who are unauthorized, it becomes clear that they are found in particular subsets of each major industry. They represent about a quarter of workers in landscaping and private household employment and about a fifth of workers in apparel manufacturing and crop production. These shares are much larger than the 5 percent they are overall in the workforce.

If we look at occupations, especially in construction and agriculture, we can see even higher concentrations. For example, unauthorized immigrants are about a third of drywall installers and farm laborers and about a quarter of roofers and painters.

But, even with these high concentrations, it is worth pointing out that whenever we look at a job category, be it a broad one or a very detailed one, there are more U.S.-born workers than unauthorized immigrant workers.

The industry concentrations of unauthorized immigrants vary considerably across the States, depending, in part, on where the immigrants have come from and the nature of each State's economy. In 15 of the 44 States where we have reliable data, the leisure and hospitality industry has the largest number of unauthorized immigrant workers. These States are largely in the West and Northeast, but not surprisingly include Florida and D.C. Construc-

tion leads in 11 States, mostly in the South, and manufacturing leads in another 11 States, mostly in the Midwest.

If we go back and look at the share of the industry's workers who are unauthorized immigrants, we get a slightly different picture. In almost three-quarters of the States, agriculture is the industry that has the largest share of its workers who are unauthorized. But, the agricultural sector is generally pretty small, so it rarely has the largest numbers of unauthorized immigrants workers in a State.

Construction also tends to have a high share of its workers who are unauthorized. It is first in 11 States and second or third in 24. Here again, the States where the construction workforce has the largest concentration of unauthorized immigrants tends to be in the South.

The construction industry, and to some extent production, have lost jobs overall since 2007. So, the number and share of unauthorized immigrant workers in these industries has dropped. As a result, the number of States where construction is one of the most concentrated industries is considerably smaller than in 2007.

Again, thank you for the invitation and thank you for your attention. There is a good deal more material in my written statement, and we are releasing a report today at the Pew Research Center that goes into some detail on the occupations and industries of unauthorized immigrant workers.

I will be glad to try to address any questions you might have.

Chairman JOHNSON. Thank you, Mr. Passel. And, you are correct. You have provided us a wealth of information in your testimony, which we truly appreciated.

Mr. PASSEL. There will be a quiz later, though. [Laughter.]

Chairman JOHNSON. I have a meeting. [Laughter.]

Our next witness is Daniel Garza. He currently serves as Executive Director of the LIBRE Initiative. In 2006, Mr. Garza became the President of Televisa's HISPANIC PODER Group and shortly thereafter joined Univision to host and co-produce "Agenda Washington" a weekly Spanish language news talk show covering the issues impacting the U.S. Hispanic community. Prior to that, he served as Deputy Director of External and Intergovernmental Affairs in the Office of the Secretary at the Department of Interior and Associate Director of the Office of Public Liaison in the White House. Mr. Garza.

#### **TESTIMONY OF DANIEL GARZA,<sup>1</sup> EXECUTIVE DIRECTOR, THE LIBRE INITIATIVE**

Mr. GARZA. Chairman Johnson, Ranking Member Carper, and Members of the Committee, thank you for inviting me to testify today.

As our G.I.s were winning the battles against the fascist powers of Europe, laborers like my grandparents and uncles came in droves to harvest the bounty of our fields and orchards, laborers with diligent hands to plant seeds and saplings, to cultivate the ground and irrigate the land, to make sure trees were pruned, that blossoms were kept warm from the cold, and sprouts were thinned,

<sup>1</sup> The prepared statement of Mr. Garza appears in the Appendix on page 848.

and vegetables and fruits were fumigated, picked, sorted, packed, stacked, and transported to market and to our soldiers abroad.

During the 1970s and 1980s, not much had changed. This was still the way of life for millions like our family, moving along the highways through the States of California, the State where I was born, Nebraska, and Washington, following the crop seasons. It was a way of life that took its toll. And, while my parents were legal residents, it was much harder for those living in the shadows.

I recall at 16 a fellow worker walked over to my father and said he had decided he would be moving back to Mexico after 5 years of hard living in the United States. Overworked, poorly paid, unappreciated, and just tired, he said he had had enough. My dad placed his hand on his shoulder, held it there for some time, and wished him well. He was gone by the end of the peach harvest season, never to be seen again. Some would call it self-deportation.

At 17, I had dropped out of high school myself, having to work the orchards and fields in order to help the family make ends meet. But, by the fall of 1987, Dad had determined it was time for us to leave the fields for good, and after 20 years of farm work, he had no retirement, no health plan, no vacation or sick leave days accrued. Quietly and without fanfare, we got in our car after filling the last bin of apples and drove home.

My parents invested their entire savings in a small business, a motel in the city of Toppenish, Washington. And after spending borrowed money and renovating the place, Dad's investment started paying off. I worked to get my General Educational Development (GED) and went off to college.

Seventeen years after having dropped out of high school, I was appointed by President George W. Bush as his Associate Director for the Office of Public Liaison at the White House to serve as his representative to the U.S. Latino community. Honestly, growing up, I never would have thought it possible.

And, that is what strikes me most about this exceptional country. It is that my parents, with their fourth grade education and all, my uncles, my cousins, and my friends from school who all started out as farm laborers left the fields long ago. They moved on to become professionals, middle class Americans living in urban and metro areas. Their children have become lawyers, teachers, engineers, counselors, and computer programmers. They have good, high paying jobs.

And, my family is but one of millions of examples of that immigrant character that helped make our Nation the most powerful and prosperous nation on Earth, a Nation of second chances. Our Nation's enduring ability to absorb waves upon waves of the least of these teaches me not to fear waves of poor immigrants coming to America. Instead, I fear a growing government that threatens to restrict our economic freedoms, resulting in fewer opportunities and in less opportunities. Part of our economic framework, if we are to adequately address market demand for labor, must include policy remedies that serve to legalize the relationship between willing employers and willing employees.

Thirty years ago, the 1986 Immigration Reform and Control Act (IRCA) provided legal authorization for the undocumented population at the time, but did little to accommodate for future flow of

immigrants. As a result, today, more than 11 million undocumented immigrants live in the United States. They risk their lives and endure the high cost of illegally crossing the border to find work because there is no viable legal option.

In reality, the vast majority of immigrants reflect the best of America. They are entrepreneurs, hard workers, dedicated students, family oriented and God-fearing. Immigration reform should address the children brought here through no fault of their own and allow for the undocumented population to ultimately become citizens after paying back taxes and any other appropriate penalties.

But, at a minimum, the United States should put in place a pragmatic, viable, market-based worker visa program that legalizes voluntary employer-employee arrangements in a way that provides immigrant workers fixed legal certainty and allows our private sector to adequately respond to market forces.

To be successful, work visas must be provided for employment at all skill levels, avoiding the exceedingly complex, cumbersome H-2 visa program's requirements that effectively serve as a deterrent to participation. The program must be flexible and induce participation. That means charging reasonable fees, matching a willing worker with a willing employer, approval of application extended to the applicant's immediate family, renewal that is required every 3 years, and a program that allows for circularity and time for visa holders to see improved job opportunities if they so wish.

If those who qualify for the program are not to receive an advantage in applying for permanent residency, a path to citizenship, that is, they are not to be disadvantaged for having received work authorization, either.

A more robust legal immigration system would serve to positively impact our economy, improve our Nation's security, and decrease pressures on the border by dramatically reducing unlawful immigration. It is a testament to this Nation, to our free market system, and to the industrious character of those who came to America that so many of us, millions who started out with nothing, achieve beyond our expectations. It was the dream of our parents. It is the dream for so many to this day, as well.

And, this is why our staff and volunteers work across the country with communities that are so often marginalized to provide services at no cost, such as English language tutoring, driver's license exam training, and instruction to launch businesses, such as entrepreneurship workshops. Our aim is to help develop a person's skill to better position themselves in the marketplace, allowing them to move on and up like millions of immigrants before them did.

At the LIBRE Initiative, we believe freedom drives progress. It is the freedom enshrined in our founding charters that actuated the vast capacities of hard working, industrious Americans and made our Nation great, the kind of capacity so readily found in our immigrant community today.

Thank you, and God bless you.

Chairman JOHNSON. Thank you, Mr. Garza. That was a well-timed statement right there. [Laughter.]

Senator CARPER. And well delivered.

Mr. GARZA. I went through it a couple of times.

Chairman JOHNSON. Our next witness is Madeline Zavodny. Ms. Zavodny is a Professor of Economics at Agnes Scott College in Decatur, Georgia. She is also a Research Fellow of the Institute for the Study of Labor in Bonn, Germany, and an Adjunct Scholar at the American Enterprise Institute. Most of her research focuses on economic issues related to immigration. Ms. Zavodny.

**TESTIMONY OF MADELINE ZAVODNY, PH.D.,<sup>1</sup> PROFESSOR OF ECONOMICS, AGNES SCOTT COLLEGE, AND ADJUNCT SCHOLAR, AMERICAN ENTERPRISE INSTITUTE**

Ms. ZAVODNY. Senator Johnson and Senator Carper, thank you for inviting me to appear here today to discuss unauthorized immigration and how to structure a guest worker program.

I have three things I will talk about. The first is why people become unauthorized immigrants. Second, what we know about unauthorized immigrants in the U.S. labor market. And, then, how best to design a guest worker program in the future.

So, the first question is, why do people become unauthorized immigrants, and I think the answer here, if you think about it from a big perspective, is that almost no unauthorized immigrants want to be unauthorized. There is just no way for them to become legal immigrants, or there is a pathway, but it is so onerous that they instead choose to remain unauthorized. The reason for this is because of the many complexities and the many failures of U.S. immigration policy.

Our current immigration policy results in large numbers of unauthorized immigrants because there is a large, broad-based demand for these workers. Yet, it is extremely hard for most people to receive a visa to live and work in the United States. If you do not have a relative here who can sponsor you or you are not highly skilled and can find an employer willing to sponsor you for legal permanent residency, you have very few other alternatives for how to enter and work in the United States.

The current H-2A and H-2B temporary worker programs are costly and cumbersome, and the H-2B program is capped at 66,000 visas a year. As a result, most employers hire unauthorized immigrants instead of using the H-2A and H-2B programs. Here is a startling statistic: the number of workers hired through the H-2A and H-2B programs annually is equivalent to about 1.3 percent of the unauthorized immigrant workforce in the United States.

The wage gains to immigrant workers are considerable, and the unauthorized are no exception. Research shows that the average Mexican worker who migrates to the United States earns about 2.5 times as much as he would in Mexico, taking into account differences in the cost of living. That is an annual wage gain of about \$9,000. The gains are even larger for most immigrants from Central America.

Of course, wage gains are not the only reason why people become immigrants or unauthorized immigrants. They also desire to live with family members here, to have their children attend better schools, and to live in safer communities.

<sup>1</sup> The prepared statement of Ms. Zavodny appears in the Appendix on page 853.

The second question is, how do unauthorized immigrants affect the U.S. labor market? And, despite the large number of unauthorized immigrants in the United States, their economic impact is quite small. Conventional estimates suggest that current levels of unauthorized immigration add about 0.03 percent to U.S. GDP each year. It is a very small number, mainly because the U.S. economy is so very big.

Despite their small overall economic impact, unauthorized immigrants are very important as a source of low-skilled labor in the U.S. economy, and increasingly so over the years, as U.S. natives have become much more likely to finish high school and go on to college. So, low-skilled immigrants, in general, tend to be unauthorized.

As Jeff Passel noted, they tend to be concentrated in construction, manufacturing, and food services. They also tend to hold jobs within those industries and occupations that are more physically arduous than low-skilled U.S. natives do, as my research with Tamar Jacoby shows.

Several studies show that unauthorized immigration has little effect on U.S. natives' earnings. In my written testimony, I cite a number of studies that have found that unauthorized immigration has not had a discernible negative impact on natives' wages or employment. There is also a broader, sizable body of research on immigration in general, most of which also concludes that immigration has little adverse effect on competing natives. Meanwhile, low-skilled immigration creates jobs higher up the skill ladder and leads to lower prices for goods and services that low-skilled immigrants produce.

Estimates suggest that about one-half of unauthorized immigrants are in the formal sector, or working on the books, and about half are in the informal sector, off the books, not paying taxes. Research suggests that E-Verify requirements drive immigrants into informal employment, or off the books. As these requirements have become more common across States in recent years, informal sector employment probably has risen among unauthorized immigrants.

The third question I would like to discuss today is how best to design guest worker programs. The United States actually has the biggest guest worker program in the world—it is just not a legal program. We have the largest number of unauthorized immigrants of any country in the world. For decades, we have chosen to tolerate a large and growing population of unauthorized immigrants rather than adopt the substantial reforms needed to reduce unauthorized immigration.

One of these reforms would need to be a well-designed guest worker program, combined with more interior enforcement. So, a well-designed guest worker program would, first of all, respond to the business cycle. As Daniel Garza noted, it needs to be flexible.

Second, it needs to be market driven. Employers need to be able to hire the workers who have the skills they seek, not have those workers chosen by bureaucrats or a computer algorithm.

Third, a well-designed guest worker program would encourage circularity. It would encourage people to return home.

Fourth, and I think most importantly, a well-designed worker program would include portability. It would allow guest workers to

easily move across employers. This is the best way, if you are concerned about effects on competing natives, to protect natives from unfair competition. We need to allow guest workers to move to employers who want to hire them and are willing to pay them higher wages than their current employer.

The fifth component of a good guest worker program is to have more interior enforcement, particularly at workplaces. In particular, we should require all employers to use E-Verify. Research shows that this has been successful, in States that have done it, at reducing the unauthorized immigrant population there.

Thank you.

Chairman JOHNSON. Thank you, Ms. Zavodny.

Our next witness is Randel Johnson. He is the Senior Vice President for Labor, Immigration, and Employee Benefits at the U.S. Chamber of Commerce. Before joining the Chamber, Mr. Johnson was Republican Labor Counsel and Coordinator for the U.S. House of Representatives Committee on Education and the Workforce. He has served in positions at the U.S. Department of Labor (DOL), National Association of Manufacturers, and the Department of Labor's Office of Administrative Law Judges (ALJ). Mr. Johnson.

**TESTIMONY OF RANDEL K. JOHNSON,<sup>1</sup> SENIOR VICE PRESIDENT, LABOR, IMMIGRATION, AND EMPLOYEE BENEFITS, U.S. CHAMBER OF COMMERCE**

Mr. JOHNSON. Thank you, Chairman Johnson and Ranking Member Carper. As Senator Carper hinted at, we have been at this quite a while, and it was about 14 years ago when my boss testified just one floor down in front of the Judiciary Committee on the Friday before 9/11 in support of immigration reform. So, I am pleased to see the Senate is back at it and perhaps we can get some action in the House.

Senator CARPER. Who was your boss?

Mr. JOHNSON. Tom Donahue.

Senator CARPER. OK. That is good. I have heard of him.

Mr. JOHNSON. And, we testified before Senator Brownback and Senator Kennedy at the time.

I am here to testify, as Madeline focused on, on temporary worker programs, how they, if properly structured, would help both increase national security and expand our economy, and I appreciate the opportunity, Senator Johnson.

Now, my written statement is quite lengthy. It is full of wonderful footnotes, such as Mr. Passel's, and I hope they are helpful to your staff. But, as I have been at this for a while, let me see if I can cut to the chase fairly quickly.

With regard to temporary worker programs and national security, frankly, this ought to be a no-brainer. Madeline touched on this, as did Daniel, but, essentially, IRCA, one of the failures of IRCA—everyone recognizes this—that it did not provide a mechanism by which employers could legally fill jobs with immigrants when they cannot find Americans available and willing to do those jobs. So, vacancies occur and those vacancies created a magnet which drew migrants from other countries, and to reiterate, as

<sup>1</sup> The prepared statement of Mr. Johnson appears in the Appendix on page 862.

Madeline mentioned, because there is not a legal way to fill those vacancies, people came illegally.

Thus, if we provide a legal mechanism in an expanded temporary worker program to fill those jobs, that would help end illegal immigration, particularly when combined with improved border security, which we all acknowledge has to occur.

And, frankly, when combined with a mandatory employment verification system—and the Chamber does support a mandatory employment verification system, much to the shock of many people—these programs, to your point, Senator Carper, about overstays, would help eliminate the problem of people coming here illegally and not returning and disappearing into the fabric of our Nation, because people could be tracked in these expanded temporary worker programs, they could not find a job outside of that temporary worker program, and the new mandatory employment verification system, if properly run, would prevent them from doing that.

Now, and, of course, to enter into these programs, and I have a lengthy footnote on this, people would have to go through a rigorous security clearance process just as they do under current temporary worker programs, and, frankly, when was the last time we ever heard of someone coming into the H-2B program or the H-1B program committing a felony in this country or whatever? And, I think the press tends to focus on those stories. I have never heard of that, just because these people come in, they are thoroughly screened, and then they leave afterwards.

Now, so it is a two-fer. They come in, they are screened, and they also take pressure off of illegal immigration.

Now, a few Department of Homeland Security (DHS) past Secretaries have said, “I do not see how you can have a good security policy without a good guest worker program,” Tom Ridge. “The only way to truly get enforcement done is to create legal pathways to satisfy what is an undeniable work need,” Michael Chertoff. “I am in favor of creating an effective guest worker program to regain true control of the United States-Mexican border,” Janet Napolitano. I also have other quotes from experts in my written testimony.

So, let us go to the economics of it. I think Madeline and Daniel have touched on this. It certainly makes sense that if an employer cannot fill a job with a U.S. worker, they should be able to recruit from overseas to fill that job. If an employer cannot fill a job, he cannot produce the product or service it needs, and, therefore, the whole GDP will suffer, as will our economy.

Now, look. General demographic trends dealing with educational, higher education among U.S. workers, an aging workforce, and a declining birth rate, tell us we are going to have shortages in many kinds of jobs. It does not tell us exactly where in this country, what those jobs will be, under what conditions those shortages will occur. So, you have to look at the demographic trends. Congress should get ahead of that curve for a change. But, also, look at how these programs are structured so that, in fact, a U.S. worker who tests the local labor market before—ensuring that a U.S. worker is not available before they can use immigrant labor. But, surely those are fairly simple concepts that we can agree to.



Now, when you look at the micro level of how these programs are to be structured, I spent much time in negotiations with the unions, people from all across the political spectrum. It is a very complicated area, but it can be done.

And, we should not get hung up on shortages, as some Committees have, because no one can almost ever agree to what a shortage is because data is all over the place. I have talked to people at the Bureau of Labor Statistics (BLS). They cannot agree to how to measure it. But, it is clearly coming in certain areas, but it is general demographic trends combined with a well-structured temporary worker program can, again, help increase border security and expand the economy because it helps employers fill jobs they need to fill.

Madeline has touched on the limited scope of the existing programs. I will not reiterate that except to say, again, looking at these limited programs needs to be read against the backdrop of 145 million workers. I mean, we are talking about a pimple on the back of an elephant. It amazes me that these programs raise so much controversy. But, I think that also tells you there is room that they need to be expanded.

Now, I know there are some who would argue employers simply use these programs to pay U.S. workers less or avoid paying U.S. workers and go to cheap immigrant labor. Nothing could be further from the truth. These programs are highly regulated. There are something like 250 pages in the Code of Federal Regulations (CFR) in small print telling what employers must do. There are protections built into these programs to prevent that, such as paying wages and prevailing wages.

And, last, with regard to enforcement, let me just say to my friends on the left, who I work with quite closely on this issue, Senators, are never going to be satisfied with enough enforcement. There will never be enough Wage and Hour Inspectors. We can have that discussion, but it has to be combined with how do we limit frivolous lawsuits being brought against employers, such as having the Department of Labor pay the attorneys' fees of the employer, et cetera, when he or she proves innocent. So, the discussion is not just about how do we have more enforcement, hire more inspectors. It is also, how do we make sure the Department is not chasing employers who are, in fact, good faith employers trying to do the best they can to comply with the laws.

And, with that, Senators, I will close my statement. Thank you.

Chairman JOHNSON. Thank you, Mr. Johnson.

Our next witness is Marc Rosenblum. He is Deputy Director of the U.S. Immigration Policy Program at the Migration Policy Institute (MPI). Previously, Dr. Rosenblum worked as a Specialist in Immigration Policy at the Congressional Research Service (CRS) and served on the National Research Council's Committee on Estimating Costs to the Department of Justice (DOJ) of Increased Border Security Enforcement by the Department of Homeland Security.

I have noticed the really long titles of a lot of people coming before the Committee, but Mr. Rosenblum.

**TESTIMONY OF MARC R. ROSENBLUM, PH.D.,<sup>1</sup> DEPUTY DIRECTOR, IMMIGRATION POLICY PROGRAM, MIGRATION POLICY INSTITUTE**

Mr. ROSENBLUM. Thank you, Chairman Johnson, Ranking Member Carper, Members of the Committee. I appreciate the opportunity to testify today.

Why is the United States home to 11 million unauthorized immigrants and what can we do about it? People move to improve their economic prospects, support their families, and escape violence or other adverse circumstances. In addition to these structural factors, immigration policy matters because illegal immigration only occurs when more or different people move than the law permits. While the supply and demand of visas are never perfectly aligned, effective immigration enforcement can limit illegal immigration even when visas are scarce, but poorly considered policies may actually exacerbate illegal flows.

So, to summarize 50 years of U.S. immigration history in about a minute, Mexican and other—and there are a lot of footnotes in my testimony, too—Mexican and other immigration grew in the 1970s because, as America transitioned from an industrial to a service economy and as globalization increased competition, demand for low-skilled, low-wage workers swelled, especially compared to the increasingly educated U.S. workforce.

Mexico experienced rapid population growth and poor job creation during this period, so the two labor markets were highly complementary. Most Mexican migration was illegal because these changes occurred just after Congress passed the 1965 amendments to the Immigration and Nationality Act (INA) imposing the first numerical limits on legal Mexican flows.

Congress recognized these trends by 1971, but did not agree about how to respond until 1986, and IRCA's enforcement policies were ineffective. In fact, enforcement during the 1980s and 1990s not only failed to prevent illegal entries, the rising cost of crossing the border also contributed to shifts in immigration patterns from mostly circular flows by single men to more permanent settlement by whole families.

Further investments since 9/11 have begun to pay off. New border and interior enforcement has contributed to falling immigration apprehensions and a shrinking stock of unauthorized immigrants, as Jeff Passel described. But, these gains have been costly. The United States has spent \$208 billion on Federal immigration enforcement since 2001, and we spend more money on immigration control than on all other Federal criminal law enforcement activities combined. We are now at a point of diminishing returns in terms of what can be accomplished through enforcement without addressing the underlying imbalance between the structural drivers of immigration and out-of-date admissions policies. I think we all agree on a lot of this.

Changes are needed to all aspects of the immigration system, not just the H-2s, beginning with the basic rules governing family and employment visas. One challenge is that family-based categories and per country numerical limits are badly misaligned. As a result,

<sup>1</sup> The prepared statement of Mr. Rosenblum appears in the Appendix on page 881.

more than four million relatives of U.S. citizens and lawful permanent residents have been approved for visas, but face wait times of up to 25 years for their visas to be issued. These backlogs have become an important driver of unauthorized immigration. Congress should create a fast track to process these visas and make immediate relatives of lawful permanent residents (LPRs) exempt from quota limits to reduce future backlogs.

With respect to employment-based flows, the policy challenge is how to support economic growth by providing employers with access to needed workers while also ensuring that immigrants do not undermine Americans' wages and working conditions. The current system fails on both of these counts. The system does not meet employers' needs because visa limits were set up in 1990 and do not reflect today's economy, employers face long wait times to hire permanent immigrants, no visa exists in most low-skilled industries, and temporary workers are subject to poorly designed recruitment rules that are a bad match to actual hiring practices. As a result, many industries do rely extensively on unauthorized workers.

But, even when employers follow the rules, current procedures failing to prioritize U.S. workers and temporary visas leave immigrants highly vulnerable to wage theft and other forms of exploitation, which also harms Americans.

To modernize this system, Congress should develop a mechanism to periodically adjust visa numbers up or down in response to changing economic conditions. Congress should permit foreign workers to change jobs and provide them with additional labor protections. Currently, employers own their temporary workers' visas, which means workers cannot leave abusive situations. Most workers should be admitted on provisional visas that allow them to qualify for permanent residence after a given time period, assuming they meet certain additional criteria.

And, Congress should simplify and streamline hiring rules, as previous witnesses have said, for foreign workers, replacing today's complex bureaucracy with a simple fee-based system that favors U.S. workers by making foreign workers more expensive than Americans. Higher fees would be a bargain compared to the hoops employers jump through today. And, fees could be used to improve U.S. workforce development and job matching.

An important step to secure the border is effective worksite enforcement. Employers now face about a one-in-10,000 chance of being fined for knowingly hiring an unauthorized worker. These odds give them no practical incentive to play by the rules.

Finally, a critical step for border security is to regularize most existing unauthorized immigrants. Unauthorized immigrants are deeply integrated into American communities. Nine million of them have lived in this country for 5 years or more. Eight million are employed across every U.S. industry. Four million are parents, mostly of U.S. citizens. Nine-hundred-thousand are children and 800,000 are elderly.

Cities are refusing to cooperate with U.S. Immigration and Customs Enforcement (ICE) because Americans do not support the mass deportation of their neighbors and coworkers. But, the status quo is unacceptable because millions in hiding undermine national security, a large illegal workforce pits employers against needed

worksite changes, and a large unauthorized population preserves a magnet and an infrastructure for future illegal flows.

Enforcement will always be an essential component of a well-functioning immigration system, but policy choices about the legal system are at least as important—how many may enter and under what conditions. As long as immigration policy fails to answer these questions more thoughtfully, our efforts to secure the border will remain expensive and much less effective than they need to be.

Thank you.

Chairman JOHNSON. Thank you, Mr. Rosenblum.

Let me first start by saying there is very little that I disagree with in terms of what has been said in testimony. Shortly after the 2014 election, realizing I would become Chairman of this Committee, I immediately said the top priority of this Committee is border security and looking at our immigration law, and I was always adding a twist to it. Certainly, part of any, I think, effective border security bill would be a guest worker program. Coming to the United States for work is the number one incentive for illegal immigration. Let us make that a legal process. There would be a whole lot less people that we would have to worry about coming in here illegally. It would be a lot easier to secure the border.

The problem with this is that, unlike the way I started in business with negotiations trying to figure out things we agreed on, President Obama did poison the well. I mean, I was actually having those conversations and the minute President Obama issued those executive memorandums, those discussions stopped, and that is unfortunate.

But, one thing I would disagree with is that I do not think the Senate comprehensive bill was a good first step, and I just kind of want to walk through that with you, Mr. Johnson, in terms of the disconnect of how that would have worked and how it would not have worked.

Before there was any kind of path to citizenship, and we can argue whether or not that is the appropriate thing or not, we would have had to, I believe, according to the bill, obtain effective control of the border, 90 percent. Now, we have had testimony here in earlier hearings that the union of Customs and Border Patrol (CBP) believes we are probably only apprehending 30 to 40 percent is all the people we are apprehending, which implies 60 to 70 percent are still getting across the border.

We see the problems of the drug cartels and transnational crime units. General McCaffrey was in here saying that we are only interdicting somewhere between five and maybe 15 percent, is the testimony we have had from a couple different sources, of the drugs coming in. So, we are so far from that 90 percent.

And, the guest worker programs that were set up in the Senate bill were meager.

I just do not see how that bill would have operated, whatsoever. We would still have had these 11 million people, not really being able to do anything with them, about them, because the trigger that we were counting on, 90 percent effective control of the border, was pretty much unattainable in any kind of near-term future, and the guest worker program is just grossly inadequate I mean,

200,000 maximum low-skilled, 337,000 agricultural workers, high skilled, about 180,000. We are talking about eight million.

So, I just want to understand your comment in terms of that evaluation of the adequacy of that bill.

Mr. JOHNSON. Well, there was a lot of history to that bill, a lot of negotiations that went into it over close to a year and a half, and with regard to the temporary worker program in there, again, of course, that was created against a backdrop of lesser skilled workers, non-seasonal, of which there are zero programs now.

Chairman JOHNSON. Again, I am stipulating—

Mr. JOHNSON. Right.

Chairman JOHNSON. So, our system right now is completely broken. I do not see how this helped. That was my—

Mr. JOHNSON. Well, no. It is zero now, so it certainly helps with regard to temporary worker programs. The numbers that were negotiated in there were a product of negotiations between Republicans and—

Chairman JOHNSON. Do you disagree they were grossly inadequate?

Mr. JOHNSON. I would say that we were looking forward to trying to raise those numbers in a—they were what we had to agree to at the time. And, the construct, however, in there, was very streamlined in terms of the recruiting process that employers would have to go through. It did allow for portability, which Marc brought up, which we supported to prevent bad employers from taking advantage of the system. The underlying construct of it was quite good.

Some of the labor protections that were negotiated may have been a little over the top, in retrospect, for the record. But, yes, the numbers were a product of compromise.

Chairman JOHNSON. From my standpoint, there are two glaring problems here. One is just a timing problem. I think there is a lot of agreement that we are not going to deport 11–12 million people. We are not. I mean, I think people recognize that.

How do we put them on some sort of path of legalization and documentation? I think most people would like to do something like that, recognize that problem and get them out of the shadows. That is not good for anybody.

The other question is, and this is going to Ms. Zavodny, there is a dispute as to whether or not the undocumented workers have or have not depressed wages. There was a rather interesting hearing in the Judiciary Committee last, I think it was last week, and there was testimony taken that Southern California Edison is terminating 800 American citizens, apparently highly skilled, and going to be hiring, I guess, probably H–1B visa workers. Eric Schmidt from Google says that there are a thousand applicants for every person he hires.

So, we hear that there is a huge shortage of technical workers, and then you take a look at this and there is contrary evidence. So, I just kind of want you to speak to the contrary evidence on the record. It is very difficult to get the truth, and until we can really figure out what reality is and get people agreeing on it, we are going to continue to be at loggerheads on this issue of how do you create an effective guest worker program and how do you acknowl-

edge the reality of what is the effect on American workers' wages, because that is a legitimate concern.

Ms. ZAVODNY. Certainly, it is important to think about what happens to U.S. natives' wages and employment when we increase immigrants, but the bulk of studies unquestionably find that there is almost no effect. This seems counter to supply and demand, if you think about what we teach in Economics 101 classes—what I am teaching tomorrow morning—but, the reason for that is because there is not a zero-sum number of jobs.

When immigrants come, jobs also get created. Immigrants buy stuff. Having immigrants here may allow businesses to pursue opportunities that they otherwise would not pursue because they may have different skills than natives have. It may slow off-shoring or outsourcing. So, when you have low- or high-skilled immigrants coming here, the jobs that otherwise would go, maybe that Google would hire workers in Canada instead, or a low-skilled company would instead set up a factory in Bangladesh instead of keeping apparel jobs in Los Angeles or something like that, so that you get those jobs being created. Plus, immigrants themselves often create businesses, and they have high rates of entrepreneurship.

And, so, I think there are lots of reasons to understand from a theoretical reason why immigration does not necessarily cost natives jobs. And then when you look at the empirical evidence, again, the bulk of it does support that.

There are studies on the other side, of course, and I think that—

Chairman JOHNSON. They are used by both sides.

Ms. ZAVODNY. Yes.

Chairman JOHNSON. Let me quickly go to Mr. Passel. There are 8.1 million undocumented workers that are working. There are a bunch of them in Wisconsin working dairy farms. I have talked to dairy farmers and they tell me that they need these workers. I mean, who else is going to milk our cows? Legitimate point.

Looking at the demographics of America, I know some people say we should do workplace enforcement and make sure everybody is documented and then hand all those jobs over to Americans. Increase wages, whatever. Do we have enough Americans to fill those jobs demographically?

Mr. PASSEL. Well, first, I have to start by saying I am not an economist, so take—

Chairman JOHNSON. Again, I am just looking for the demographics right now. I am talking about the number of people needed to do the jobs that need to be done.

Mr. PASSEL. The overall demographics of the United States point to kind of a bulge of workers at the upper ages, the Baby Boom. And if you look at what is coming down the pipeline in terms of employment and potential employment, it would probably be useful to have more people in their 20s and 30s over the next 20 years to help support the U.S. economy—

Chairman JOHNSON. Again, I am just saying, you have laid out all the areas where undocumented workers are working.

Mr. PASSEL. Yes.

Chairman JOHNSON. If they all went home, would we be able to fill those positions as a demographer—

Mr. PASSEL. Looking at the education of the native American population, in the native population, the number and share with low levels of education has dropped dramatically. So, in that sense, immigrants with low levels of education move into jobs that, basically, there are not enough Americans who have dropped out of high school. We do not want people to drop out of high school. But, if you look at the jobs that the immigrants are doing, they are in a set of jobs where there are natives, but not as many, and not necessarily in the same parts of the country.

Chairman JOHNSON. Before I turn it over to Senator Peters, does anybody else want to answer that question, provide input on it? Sure, Mr. Rosenblum.

Mr. ROSENBLUM. I would just add that—and this sort of goes back to your first question, also—I mean, it is certainly more efficient to legalize those unauthorized workers than it is to deport them and recruit new people for those positions where they are already working. There is some debate about whether unauthorized workers drive down U.S. wages. There is no debate that legal workers have a better effect on wages than unauthorized workers. So, it is a win-win situation when you look at unauthorized workers who are working in the United States. Legalizing them improves their economic prospects and improves that of U.S. workers and that is a much more efficient sort of economic response than to deport them if they are here employed and to try to recruit new people into those positions.

Chairman JOHNSON. And, Mr. Garza.

Mr. GARZA. If I could just add, there are reports that show that for every deportation, it costs us over \$20,000 per person. So, it is a costly proposition for us, and the premise of my presentation was to show that immigrants who start off in America, it is a natural progression that they are going to achieve the American dream and move on and up. So, you have to replace those folks that are going up the quintiles economically. So, it is just critical that we have that kind of reform that would accommodate for future flows, not just the current flow.

Chairman JOHNSON. OK. Senator Peters.

#### **OPENING STATEMENT OF SENATOR PETERS**

Senator PETERS. Thank you, Mr. Chairman, and thanks to the panelists for being here today and adding to this very important discussion for our country.

I noticed that in the title of the hearing was, “Defining the Current Population Living in the Shadows,” although I heard a lot of testimony related to visa programs and other aspects and less about defining the current population that is actually living in the shadows. I would like to spend a moment talking about that and then getting some reaction from some of the panelists related to that. It is an issue that I feel very strongly about, and that is related to young people who come here to this country, who obviously did not have a choice when they came. They came with their parents who came here on an undocumented basis. And, when you hear those stories, they are just so compelling as to why we need to have reform in our immigration system to make sure that these

young people, who really know no other life except that as of an American.

I have examples of two individuals, a young woman who I know who entered the United States from Albania, when it was a war-torn country, and she entered this country when she was 5 years old, and lived here her whole life, knows no other life. Currently, her mother works, or worked 16-hour days at a bakery that she created when she came here in order to save for her daughter's education. This young lady worked very hard in school. She graduated with a 4.4 grade point average (GPA), which is not an easy thing to do. I did not know you could get more than four points. I guess things have changed. But, she is a 4.4 GPA, and with her record, she was admitted into the University of Michigan. Her dream is to become a surgeon and a physician, and yet she is here on an undocumented basis and the government would like to deport her, which makes no sense to me whatsoever.

We have another young woman who also had similar struggles who we have been talking to in our office, and she entered into the country with her folks in an undocumented basis when she was 10 years old. She was on a 4.0 student, took all advanced placement (AP) courses, graduated in the top one percent of her high school, had many struggles, but she did graduate from the University of Michigan. She has a triple major in political science, psychology, and sociology with a 3.9 GPA from the University of Michigan. And, if it was not for the Deferred Action for Childhood Arrivals (DACA) protections from the President, she would have been deported, which makes no sense to me.

I have no idea how this is good public policy for the United States, where we have these young people who have come here, have lived here, are living the American dream, or working hard in school, moving forward.

So, my question is to you, Mr. Garza, I know in your prepared remarks you state that immigration reform should address the children brought here through no fault of their own and allow for the undocumented population to ultimately become citizens after paying back taxes and any other appropriate penalties, and I certainly could not agree more after these two examples, and there are other examples. We get a lot of cases. Michigan has a very diverse population. The congressional district that I represented prior to being elected to the Senate was extremely diverse.

So, if you would comment and, first off, I guess, do you support the President's executive action relating to DACA?

Mr. GARZA. We do not call on rescinding the executive action—

Senator PETERS. You do not? You do not support it.

Mr. GARZA. Not on rescinding it, no. We have made our feelings known about the Deferred Action for Parents of Americans (DAPA), the other one, that we felt was—

Senator PETERS. DAPA.

Mr. GARZA. DAPA, right, exactly, that we felt was executive overreach, that the President must have the permission and the consent of Congress before moving on a policy that confers benefits onto anyone, that that is the role of lawmakers and that he should respect that role, so that there is not any opportunity for rescinding that law, that folks do not enlist and then they are exposed or to



deportation, possibly, and are victims of a good faith effort on their part, so we want to avoid all that. But, I could not agree with you more when it comes to Dreamers and the situation with the children who come here, who were brought by the parents, the parents who came here seeking opportunity.

Senator, let me just say, back in the 1920s, we had an amendment. It was called Prohibition. And, that law said that nobody could produce, consume, or distribute alcohol, and it was illegal to do so. Yet, millions and millions of Americans violated that law. It was a felony to do so. Were they bad people? It was a bad law, is what it was. Sure, there were some bad elements during that situation, but the same is here.

For want of opportunity, folks have violated the law. We can stipulate to that. But, it is to meet labor demand. They come here to work, not to violate the law. Are they bad people? No, it is a bad law and it is something that I think we can fix, that we can address and we can resolve, and it would alleviate the problem with these children, who have dreams, who have aspirations. And, we want to honor those aspirations and honor, really uphold, our own ideals as a Nation of immigrants and allow people to thrive.

Senator PETERS. I appreciate your comments related to the executive action, but I think we will agree that this is definitely Congress's action to take. It is unfortunate that Congress simply refuses to take this action. All of this debate we are talking about the actions that the President has taken or has not taken all could be moot if Congress just stepped up and passed comprehensive immigration reform, which deals with all the issues that we have been hearing about here today in this hearing, whether it is visas or the DACA program, the Dreamer program, go down the list, Congress needs to act.

Unfortunately, too many of my colleagues are spending time pointing fingers and blaming the President for this or that, or accusing others for this, instead of getting the work done, just rolling up our sleeves and getting the work done. And, so, absent the President's action, these two young ladies that I talked about, they would be deported. It makes no sense whatsoever. I cannot think of any public policy reason why you would take two outstanding young women who are going to be great contributors to this country, who are pursuing their dreams, the very basis of what this country was built on.

I look around—I think everybody in this room who is a U.S. citizen came here from somewhere else, their family did. My mother came here as a naturalized citizen. But, we all came from something else, somewhere else, to make this country. So, we have to take action.

I would hope that groups like yours, instead of spending time attacking the President, would instead tell Congress to get our act together. Roll up your sleeves. Quit making this a political issue. Make this the human issue that it is that impacts families and let us take action on that. So, I would certainly hope that everyone on this panel would do that, as well.

I am out of time. Thank you.

Senator CARPER [presiding.] I am Tom Carper and I approve that message. [Laughter.]

Let me just say, this is a great panel.

Randel Johnson, do people ever call you Randy?

Mr. JOHNSON. Randy, like the baseball player. [Laughter.]

Senator CARPER. I had the pleasure—we live in Delaware, and Philadelphia is not too far from us, so we had a chance to watch him pitch from time to time. Boy, he was good. He was really good.

Mr. JOHNSON. He was making more money back then, too.

Senator CARPER. It is amazing what they pay these guys these days.

Well, happy you are all here, and I apologize for having to slip out. We had some people who came by to talk to me about building aircraft carriers. I am an old Navy guy. We are down, I think, from 11 to 10 carriers and they were trying to tell me why we ought to build an 11th carrier. It costs \$13 billion. We are going to overhaul the George Washington, which is almost 25 years of age. We can overhaul it for about \$600 million and it will go another 25 years. Pretty good, huh?

I was just telling them, I have taken a bunch of Boy Scouts down to the Norfolk Naval Station over the years for a weekend, just for a good experience for the kids. One year, we visited the Teddy Roosevelt, which is a nuclear carrier, and the captain of the ship came out on a Sunday morning to welcome the boys on board the Teddy Roosevelt. And he said to our Scouts, 25 or so of them, and about a half-dozen adults, he said, "Boys, he said, "when the Teddy Roosevelt goes to sea, it is 1,000 feet long." And the boys went, "Ooh." And he said, "Boys, when the Teddy Roosevelt goes to sea, it is 35 stories high." And the boys went, "Ooh." And he said, "Boys, when the Teddy Roosevelt goes to sea, it has 5,000 sailors on board." And the boys went, "Ooh." And he said, "And when the Teddy Roosevelt goes to sea, there are 75 aircraft on board." And the boys went, "Ooh." And then the skipper of the ship said, "And, boys, when the Teddy Roosevelt goes to sea, it refuels once every 25 years." And the adults went, "Ooh." [Laughter.]

Every 25 years, we have to overhaul them for \$600 million. And, having made a \$13 billion investment, then we get another 25 years out of the ship. That is smart. That is not cheap, but I think it is a good investment. And, as my dad would say, it is using common sense. My dad was an old Navy guy, too.

But, let us think a little bit about common sense and let us think about not just values, but common views, a commonality of consensus. And, one of the great things about a Committee like this, or a hearing like this with a panel of witnesses like all of you is you are going to help us get to consensus. In fact, you are already making your contribution toward that and we appreciate that very much.

Dr. Zavodny—that is a great name. Has that always been your name?

Ms. ZAVODNY. Yes.

Senator CARPER. Yes, I would keep that one.

Ms. ZAVODNY. Thank you.

Senator CARPER. Dr. Zavodny laid out for us, I do not know, about five or six elements of a well designed guest worker program, and you know what I am going to ask you to do is just mention those again, and then I am going to ask these men that are sitting

around you for them just to comment on your points. I thought they were well taken.

Ms. ZAVODNY. I am a professor. I give the quizzes, usually. [Laughter.]

Here are those points. First, it would respond to the business cycle. Second, it would—

Senator CARPER. Go through these very slowly. First—

Ms. ZAVODNY. Respond to the business cycle.

Senator CARPER. OK.

Ms. ZAVODNY. That would be that you would increase the number of visas when the economy is growing faster.

Senator CARPER. Yes.

Ms. ZAVODNY. Second, it would be market-driven so that employers would choose the workers with the skills that employers want.

Senator CARPER. Yes.

Ms. ZAVODNY. Third, it would encourage circularity. I think this is the one on which we may disagree the most.

Senator CARPER. That is the ability to move back and forth?

Ms. ZAVODNY. Right. And so, the current programs—I will say very little, very few good things about the current H-2 and H-2B programs, but they actually do this. There are very few visa overstays that we know about from the current worker programs.

Senator CARPER. That is interesting.

Ms. ZAVODNY. Because you get to come back if you went home. You can come back again and again and again and earn money for your family.

Senator CARPER. Yes.

Ms. ZAVODNY. The fourth category is portability, so this is being able to move across employers.

And then the fifth is increased interior enforcement at workplaces, particularly through mandatory E-Verify.

Senator CARPER. OK. All right. Let us just take them one at a time. Just go back to the first one. Just mention the first one again.

Ms. ZAVODNY. Sure. So, the first one is that it is responsive to the business cycle, that when times are good, we increase the number of visas.

Senator CARPER. Yes. I would welcome—Marc, do you want to start us off with your thoughts, and then we will—

Mr. ROSENBLUM. Sure. So, I certainly agree. I think everybody probably at this table agrees that the system should be more responsive to business cycles, but that means not only going up when the economy is booming, but also going down when it is contracting.

Senator CARPER. Good.

Mr. Johnson, the real Randy Johnson.

Mr. JOHNSON. Right. Yes, well, I think it is pretty clear, I do agree with that. The question is, when we talk about escalators, what is the formula, and I can tell you that we spent many weeks trying to figure that formula out when we were negotiating with the AFL-CIO on the program that wound up in the Senate bill. So, the concept is easy. How do you measure that business cycle? What is the escalator in terms of how the numbers go up and down—

Senator CARPER. What did you all finally agree on, do you know?

Mr. JOHNSON. It was a mixture of weights and this and that. It is complicated.

Senator CARPER. Yes. Dr. Rosenblum.

Mr. ROSENBLUM. Yes, if I could just come back in on this. The complicated formula that they came up with in S. 744 is very complicated. One of the things that MPI has recommended is for Congress to commission an expert panel along the lines—

Senator CARPER. Like this one.

Mr. ROSENBLUM. Yes, like this one, but along the lines of the Congressional Budget Office (CBO) or the Congressional Research Service that would advise Congress on how to adjust numbers up or down on a regular basis, because it is such a complicated issue and we are not going to come up with a formula just by looking at the unemployment rate and wages. You are going to want a bipartisan panel of serious people to figure this out and then make recommendations to Congress, and then ideally have a mechanism for those recommendations to be binding unless Congress overrides them.

Senator CARPER. And, Randy, having gone through the negotiations with the labor folks, what did you learn about making the next negotiation, or should we just take in full cloth what you came up with in that negotiation?

Mr. JOHNSON. Well, those were different times and different situations. There is the old saying, as you all know better than anybody, Senator, there is no deal until there is a whole deal. So, everything depended on other parts of the bill and what did we give here, what—

Senator CARPER. Yes.

Mr. JOHNSON. And, so, I hate to just make a category—it just all depends on lots of other factors.

Senator CARPER. OK. That is a good point. All right. Mr. Garza, thank you very much, all of you, for your testimonies. I thought your testimony was especially heartfelt.

Mr. GARZA. Thank you.

Senator CARPER. I appreciated that story, because, really, you told a story. I once asked Bill Clinton why he was such an effective communicator and he said, “Well, what I do is try to tell a series of stories in order to make more complex points. And,” he said, “people understand stories. They get involved in the story and they understand.” So, you told us quite a compelling story.

Mr. GARZA. Thank you so much. Well, it comes from my parents, who were just wonderful people, wise beyond their fourth-grade education, and so I learned so much from them, I wanted to share that.

Senator CARPER. I always tell people—people say, why have I—or ask me why I have had some success in my life. I always start off with, I picked the right parents. [Laughter.]

Mr. GARZA. That does have a lot to do with it.

I could not agree more. I think it does have to respond to market forces. I think we have to have a sensible, predictable labor force that matches the right skills, but also, the market is dynamic. The market turns. It ebbs and it flows, and I think we need to have a system, or at least a reform that responds in real time.

So, I think folks get the information in Central America, in Mexico, and in other parts of the world about what is happening in the economy in Mexico and they also move in real time. Look, I mean, the fact is, man is in motion. Man has always been in motion, seeking opportunity. We need to have a dynamic program that allows to marry a willing worker with a willing employer.

Senator CARPER. OK. Dr. Passel.

Mr. PASSEL. I am going to have to beg off on this. My organization, the Pew Research Center, is what we call a fact tank and we assiduously avoid taking positions on policies. We try to provide data that can be used to address them. So, we do not study the mechanisms for providing guest workers, so I will not venture an opinion on this.

Senator CARPER. All right. Fair enough.

Let me ask another question. This is a little off the beaten path, but how many of you have ever met anybody who was born in Iowa? Raise your hand if you actually met somebody born in Iowa. No? Iowa.

How many of you have ever met anybody born in, say, in Montgomery County, Iowa? Montgomery County.

And, how about in Red Oak in Montgomery County, Iowa? Well, if you have not, you are just about to meet one and she is going to ask some questions, as well, and her name is Joni Ernst. Joni, welcome.

#### OPENING STATEMENT OF SENATOR ERNST

Senator ERNST. Thank you very much, Senator Carper. I appreciate you having this hearing today.

Senator CARPER. We did it just so I could tell them where you were born. [Laughter.]

Senator ERNST. I do want to apologize. We do have a lot of hearings this morning. But, I appreciate your testimony today. This is a very important topic for all of us.

So, my first question, Mr. Garza, if you would, please, in the eyes of someone that is crossing the border illegally from Mexico or from Central America, would you say it is their best belief or their belief that if they can just get into the United States, that they will be granted citizenship or legal status in a much faster manner through the President's recent Executive Orders (EOs) rather than going through the legal process?

Mr. GARZA. Regrettably, there is a lot of distortion, a lot of communication that gets down to Central Americans, people who are in desperate need to improve their lot in life, and unfortunately, I think when "la necesidad" exists, they are more prone to believe just about anything. There are coyotes and traffickers who will deal in distortions and appeal to people's good faith and sell them a bad bill of goods, and that has happened. It has occurred, a lot of it directly because the executive action allowed for that opportunity to distort the truth, and a lot of folks came and surged the border.

I mean, I saw that. I live five blocks from Anzalduas Bridge in Mission, Texas, and so we had to deal, then, with the result of that, with the repercussions. And, luckily, we have good people in our community in McAllen, Texas, who got together, who provided resources, who provided toys to the children and acted compas-

sionately. But, yes, the feedback that we got from them was that there was a lot of distortion of the truth.

Senator ERNST. Do you think a lot of that is coming from the governments in that area, or is it more from the traffickers that are trying to funnel people with other illicit types of goods to the United States? Where do you think a lot of that is coming from?

Mr. GARZA. Honestly, I could not tell you with certainty, but I do know that it is coming from the traffickers. I do know it is coming from that illicit market, and they trade in human beings and sex slaves and the drug cartels that push this information. I cannot tell you with certainty that it comes from the governments. That would be a crying shame.

Senator ERNST. Yes. I agree, it would be.

Any thoughts from the panel on that, just belief—yes, sir. Go ahead.

Mr. ROSENBLUM. I know that the governments are very actively discouraging that misinformation. I think the United States believes that those governments are working pretty closely on an information campaign to combat that. So, I would not hold the governments responsible.

But, the other thing, I think it is also easy to overestimate the importance of the President's executive action in enticing people to come, and the reason I say that is that what we saw in the last 2 years is a huge surge of children coming from Central America, but no change at all, and actually a slight decline, in children coming from Mexico. So, if there is a general view that if you get here, you get DACA, you would expect that the Mexican numbers would come up, but they have not. They have been flat or slightly down. So, there is clearly something happening in Central America that is causing people to come. It is not just that everybody is responding to DACA because we do not see Mexicans responding to DACA.

Senator ERNST. OK. Any other thoughts on that from the panelists?

[No response.]

OK. Well, I appreciate that very much.

How many do you anticipate, in light of the Administration's policies from 2014, how many do you anticipate, those that are living in the shadows now, how many do you anticipate will come forward after the declaration? Maybe you can address that, Dr. Rosenblum.

Mr. ROSENBLUM. From the executive action?

Senator ERNST. Yes.

Mr. ROSENBLUM. Well, I mean, as you know, there was the 2012 announcement of the original Deferred Action for Childhood Arrivals program, and we estimate that about 1.2 million unauthorized children are eligible for that program and a little over half have come forward.

The 2014 announcement would have expanded the program for children and created a new program for parents, and both of those are on hold, pending the lawsuit in Texas. But, we estimate that, I believe the number is another 4.9 million would be eligible for those two programs if they are fully implemented. So, that is the maximum that you would expect to see, depending on what share of that population takes advantage of the program.

Senator ERNST. Anyone else? Yes, sir.

Mr. PASSEL. Our numbers of the eligible are in the same range. They are a little bit lower. We have no idea who is likely to come forward. We have two examples. We have the 1986 IRCA legislation and we have the DACA program. In both of those, if you look at estimates of how many people might be eligible, it looks like 60 to maybe 70 percent of the people who were eligible actually came forward. Under DACA, our estimate is at 1.1 million and about 600,000 so far have come forward, and under IRCA, the estimates were there were about 2.5 million or so eligible and 1.6 million came forward under the general program there.

So, in the range of half to two-thirds if you have decent estimates of how many might be eligible. The Migration Policy Institute, the Pew Research Center and DHS have done some estimates, and they are all in the same ballpark of four to five million people who might be eligible.

Senator ERNST. And, it does look like the estimates vary, of course, by State. A lot of States will be impacted in a greater manner than probably most States like Iowa. I was surprised to see in the Pew research that we have in Iowa about 40,000 unauthorized immigrants. That is the information that was provided to us. And, that is about 3.5 percent of Iowa's total population. Obviously, States like California or Texas or others would be impacted greater by any further executive actions or, one way or another, what happens with this court decision.

So, I appreciate the testimony today. I look forward to hearing more as we move forward. Thank you.

Thank you, Mr. Chairman.

Senator CARPER. Thanks so much for coming and for your questions—

Senator ERNST. Thank you.

Senator CARPER [continuing]. And for letting us introduce you.

Before you got here, Senator Lankford, I queried the panel and gave them a little quiz on the background of Senator Ernst. I am not going to do that with you, but it was a lot of fun to do that with her. But, this guy has a great background and great preparation for this job, as well, so you are on.

#### **OPENING STATEMENT OF SENATOR LANKFORD**

Senator LANKFORD. Deal. Thank you.

I have a couple of questions just about countries of origin and where I think it is pretty commonly understood that the population that is here without documentation, illegal, whatever term that you want to use, are really from four countries, and I want to see if you all agree: Mexico, El Salvador, Honduras, and Guatemala, the vast majority. Do we know what percentage, if the numbers are somewhere around 11 million, let us say, 11.5 million, what percentage of those are from those four countries?

Mr. PASSEL. I will take that. Actually, Mexico is truly an order of magnitude larger than the others. Our most recent estimates are that Mexico accounts for about 5.8 to 5.9 million of the 11.2 million, so it is over half, about 52 percent.

El Salvador, we estimate around 675,000, so it is a good deal smaller, but does represent about 5 or 6 percent of the total. And,

Guatemala and Honduras are a little bit below that, around half-a-million to 400,000.

So, if you put all of those numbers together, it is a little bit over seven million. So, somewhere around 70 percent of the unauthorized immigrants are from those countries. But, again, it is really Mexico that is the driver of this. The others are large relative to the populations of their countries and relative to the number of legal Hondurans, Guatemalans, and Salvadorans here, but the numbers are just a lot smaller than the Mexicans.

Senator LANKFORD. So, what percentage do you think of those are connected in some way to the protected temporary status from Hurricane Mitch back in the 1990s or from the temporary protected status was given to the Salvadorans from the 1980s?

Mr. PASSEL. The numbers, if I recall correctly, are about a third of the Salvadorans that are included in that are covered under the temporary protected status. For the others it is a little bit smaller, a quarter of the others.

Senator LANKFORD. Do you assume that a majority of those that are coming, then, as family members, are connected in some way as family or connection to those that were given temporary protected status before?

Mr. PASSEL. I really do not know.

Senator LANKFORD. Did we see a large influx before that, I guess is part of my question. So, you go back to prior to that temporary protected status. Was there a large influx of individuals from Honduras and from El Salvador into the United States, or did that accelerate after that temporary protected status?

Mr. PASSEL. I think the numbers, in general, from all countries, accelerated in the late 1990s and early 2000s. It seems that the ebbs and flows that we have seen are more tied to the economic booms and recessions so that we did see the numbers, in general, particularly Mexicans, grow rapidly in the 2000s and in the 1990s. They slowed a little after 2001, and then they picked up as the U.S. economy picked up. And then after 2007, the numbers dropped a good deal.

Senator LANKFORD. Right, but we are not seeing the large influx of Nicaraguans or folks from Costa Rica or Belize, Nicaragua obviously having a very tough economy right now, as well.

Mr. PASSEL. No, but there are only about 2.5 million Nicaraguans.

Senator LANKFORD. Right.

Mr. PASSEL. It is not a big country, so—

Senator LANKFORD. Has there been a breakdown that you have seen that you would consider reliable within the United States of where these different groups land? So, that is, Salvadorans end up typically in these three or four areas. Obviously, Mexicans, the largest population, very diverse around the United States. But, of those from those three Central American countries, have you seen a reliable breakdown of where they land?

Mr. PASSEL. We have put out some of that and we have some unpublished data on that. A report we put out back in November had the top three countries for every State in terms of their unauthorized and we have some more detail on it that we have not published.



Senator LANKFORD. OK. I would be interested in getting that, so thank you all for your work. Thanks for allowing me to be able to step in.

Senator CARPER. We are just glad you came. This man has been down in that part of the world and shows every intent of going back and being a part of working all of this out, which is good.

Senator Ernst, do you have other questions?

Senator ERNST. Thank you, Mr. Chairman. Of course. I will just quickly follow up.

So, it is very frustrating, because we do have a legal immigration process in place. I think many of us would agree or disagree, that it does need to be modernized in some form or manner, and I know you have had some discussions on that already. Mr. Garza, you did mention, also, in your written testimony, that most immigrants would not risk their lives to illegally come to this country if we had a viable legal option, and yet we do have 41 million immigrants that are here in this Nation and most of them have come here legally.

So, it is very frustrating, I think, to many of the other legally immigrated populations to see illegal immigrants come here and gain some sort of status, whether it is through executive action or other. Can you give us some more information, maybe, from those populations on their frustration with this, or are they not frustrated at the fact that people come here illegally and then are granted status?

Mr. GARZA. Sure. I think, like all Americans, folks who came here as immigrants have a vested interest in, obviously, having a healthy society, a vibrant society, where rule of law is respected. You see that both in the Latino community, in the black community, and in the Anglo community.

Look, as Anglos, I think we are just as proud of our country as anybody else. We have shed our blood on foreign battlefields to protect this country and our ideals, our Constitution. Ideally, what you want is everybody to respect the rule of law. But, sometimes you have a broken system where labor demand is—cannot be accommodated, where, also, those who seek opportunity, there is no viable option for them to come to America. And, so, what you have is a misalignment of labor demand and what the law is.

The IRCA Act did accommodate for the three million, at the time, that were here illegally, but it did not accommodate for future flows, which is why we have the condition we have today. And, these are, like we have all said, good, decent, hard working, otherwise law-abiding folks who are searching for opportunity. Public policy must allow people to thrive and people to participate in a rational activity of selling their labor and buying labor.

Remember, because in all of this, if I could say in parentheses, that there are millions of Americans who are also violating the law by hiring folks who are here unauthorized.

Senator ERNST. That is correct.

Mr. GARZA. And so, in a way, the law has to be accommodated for them, too, where we can legalize their relationship, for these kind of business relationships. So, we are unable to do that with the current law, Senator.

Senator ERNST. OK. Thank you. I appreciate that.

And, I am sorry, Ms. Zavodny, is that correct?

Thank you so much. Immigration bills typically, they score high from the CBO because CBO estimates that many will become part of the formal economy. What percentage of the unauthorized population is currently already working in the formal economy?

Ms. ZAVODNY. The best estimates that we have are from 2007 from the Congressional Budget Office and they are that about half of unauthorized immigrants who are working are on the books, so that they are paying payroll taxes and, in many cases, Federal income taxes, as well.

The one caveat I would add to that is that the 2007 estimate and my best guess would be that the fraction is maybe a little bit lower now because of States that have adopted E-Verify. In those States, there has been a move out of those States, first of all, by unauthorized immigrants, but among the unauthorized immigrants who have stayed in States that have adopted E-Verify, there is also a movement toward working off the books because it is much harder to get a formal sector job.

Senator ERNST. Right. Thank you very much. I appreciate that.

I do think that most of us agree that we are a Nation of laws. We are a Nation of immigrants. We need to enforce the laws, but I do think that there is room for movement with our legal immigration process. It is just finding what we can agree upon and implementing those changes. So, I do appreciate your testimony today and look forward to working with all of you in the future on this tough issue. Thank you.

Senator CARPER. Thanks for your questions. Thanks for being so faithful in your attendance.

Senator ERNST. Thank you. Thank you, Senator Carper.

Senator CARPER. How many other Committees do you serve on now?

Senator ERNST. I am on three other Committees.

Senator CARPER. I said to her yesterday when she was leaving, there was a time I served on five Committees, and we have some people who do that today, and it is really hard to be able to do justice to all of those.

I am going to go back, Dr. Zavodny, to the five points that you made, and I would ask the other witnesses to just quickly walk through them. The first one, I think, dealt with being able to respond to the business cycle. And the second point dealt with enforcement. And, one of the things that you said in your testimony, I just want to repeat it again. You said a well designed program would allow employers to hire workers who have the skills they seek. But, you also go on to say, of course, a guest-worker program needs to involve enforcement of minimum wage laws, overtime pay requirements, and workplace safety and health relations. Payroll tax treatment and employer-sponsored health insurance requirements for guest workers must also be equivalent to those for domestic workers.

Let me just ask, do each of the other four witnesses agree with that statement? And, just say yes or no. Dr. Rosenblum.

Mr. ROSENBLUM. Certainly, and there has been——

Senator CARPER. OK. That is all you have to say.

Mr. ROSENBLUM. Yes. [Laughter.]

Senator CARPER. Good. Mr. Johnson.

Mr. JOHNSON. Right. Yes, the Chamber does agree on all those principles and we long have agreed on those.

Senator CARPER. All right. Good. Mr. Garza.

Mr. GARZA. I am sorry. Could you repeat those principles—

Senator CARPER. I would be happy to.

Mr. GARZA [continuing]. Because you drilled down, is what you did.

Senator CARPER. Sure. I will just use Dr. Zavodny's words. Of course, a guest worker program needs to involve enforcement of minimum wage laws, overtime pay requirements, and workplace safety and health regulations. Payroll tax treatment and employer-sponsored health insurance requirements for guest workers must also be equivalent to those for domestic workers.

Mr. GARZA. Yes.

Senator CARPER. Thank you. Dr. Passel.

Mr. PASSEL. Pass.

Senator CARPER. OK, good.

The third point that you made, Dr. Zavodny, dealt with circularity, and I think you said a guest worker program should encourage circularity by allowing guest workers to come back to work in the United States in the future if they return home when their contract is up. Another good way the current H-2A and H-2B programs encourage circularity is by not allowing temporary foreign workers to bring their family members with them.

Dr. Rosenblum, your reaction to that.

Mr. ROSENBLUM. Certainly, if we had more legal visas, we would likely see more circularity. Historically, workers have traveled back and forth between the United States and Mexico a lot more than they do today. I think that I would prefer to see a guest worker program that had provisional visas that would allow people to potentially remain in the United States. So, you do not want to compel circularity if people are successful workers in permanent positions and their employers want to promote them and they may have families here. So, a flexible system allows but does not require circularity.

Senator CARPER. OK. Fine.

Ms. ZAVODNY. May I interrupt? I am not an immigration lawyer, I am an economist, and Randy Johnson points out that I was wrong. The H-2A and H-2B programs do allow workers currently to bring their immediate family with them.

Senator CARPER. OK, good. Thanks. Thanks for noting that. Gosh, he is even smarter than I thought.

Mr. JOHNSON. See, we have a small business guide in immigration law. It is very useful.

Senator CARPER. There you go.

Mr. JOHNSON. We will send up a couple of boxes.

No, we agree with those principles. I think there is often an issue in these debates in terms of what conditions would someone who works in a so-called temporary worker program be able to move to green card status, and the Senate bill had a very complicated sort of deal on that depending on points. And, then, there are those who would prefer that a true temporary worker program be temporary, which is people can come, but they must leave, on sometimes a

three-to-one—work 3 years, stay out of the country for one year, come back, and that sort of thing. So, that is an area of much debate within both Republicans and Democrats. But, we certainly agree that there needs to be circularity.

Senator CARPER. OK. Thanks.

Mr. Garza, just very briefly.

Mr. GARZA. Absolutely. I think we feel that circularity is fundamental to any temporary worker program. I think the current focus on border enforcement right now is trapping people here and keeping them from actually going back to their countries of origin and that should change.

Senator CARPER. Thank you. Dr. Passel.

Mr. PASSEL. Just to pick up on that point, one of the things that we have seen over the past 7 or 8 years, and the mechanism seems to be the one that Dr. Rosenblum addressed in his testimony. The enforcement at the border seems to be keeping people in the country as much as stopping people from coming in. So, when we look at the unauthorized population today, over 60 percent have been here 10 years or more. And, if we go back to 2007, it was about a third of them who had been here 10 years or more. So, the period of enforcement has led to people staying longer and we are not seeing many new people, but the ones that are here are definitely staying.

Senator CARPER. OK. The fourth point that Dr. Zavodny made is, unlike the current H-2A and H-2B programs, a well-designed program would allow visa portability or for guest workers to easily move across employers. Would you react to that, Dr. Rosenblum?

Mr. ROSENBLUM. It is a very important issue and definitely a way to strengthen workers' ability to sort of defend their labor rights.

Senator CARPER. OK. Thank you. Mr. Johnson.

Mr. JOHNSON. Yes, with a caveat, which is I think you have to look at the degree and the length of the program. For example, Senator, if it is a very short-term program, you cannot expect an employer to go through a lot of these costs of recruitment, and then they can part within 10 days, by the time they come over here with the employer that went through all that work.

So, sometimes in these programs we have talked about portability after 3 months. But, it sort of depends on the length of the program. The shorter it is, the less sense it makes. Also, those you have to port to—you can port to—should also, of course, have gone through a process of showing there is a shortage of American workers, and the construct we had in the AFL-Chamber deal went through that.

So, that is a little bit of a longer answer than you perhaps wanted, but yes, we agreed with portability with some exceptions depending on the program length.

Senator CARPER. Good. Thank you. Mr. Garza.

Mr. GARZA. We feel portability honors and upholds the ideals of a free market and the free market should benefit both the employer and the employee. And so, I think the employee who comes in under a visa should be free to seek either better opportunities, and they have, I think, the preference, really. And, look, let me just say, also, that when I was 15, I was working with my father in the

hot fields and a crew came over and asked Dad if he could go to the farm owner and ask for a raise, because he spoke English. Dad went in and asked for the raise and the farm owner fired him for asking for a raise. My dad was a permanent resident. He had options. What if he had a visa? What was he going to do?

So, there should be opportunities in the free market for folks to sell their labor to who they want, when they want.

Senator CARPER. All right. Thanks.

Just very briefly, Dr. Passel.

Mr. PASSEL. And, again, that is something that we do not take a position on—

Senator CARPER. All right. Thanks.

I am going to come back, and we have a fifth point, but on the next round, I want to come back to the fifth point and ask for your reaction to that one related to E-Verify. Thanks.

Thanks, Mr. Chairman.

Chairman JOHNSON [presiding.] Thanks, Senator Carper.

I think it is a reality that the more we have secured the border, the more we have locked in here and we have reduced that circularity.

I am by no means an expert in the Bracero program. Anybody here able to speak to that? Mr. Rosenblum. So, what I have done in the past, and let me do it real quick, we have a history of passing laws that are going to fix these problems. They do not fix the problem. So, I have been starting in the 1986 Immigration Reform and Control Act, and we had about 3.9 million illegal immigrants. Then, the 1990 Immigration Act, about 3.5 million. In 1996, another act, 6.2 million. In 2001, part of the PATRIOT Act, 9.6 million. In 2002, we are up to 10.2 million people. In 2004, a piece of legislation, we are up to 11 million. The Secure Fence Act of 2006, 11.7 million. It just has not worked, and that is kind of my concern.

So, talk to me—when we had the Bracero program, I do not think we had good, accurate information in terms of how many people might have been in this country illegally, but it is, by the way, a rational economic choice for people to come from Central America and Mexico. With that kind of wage differential, I mean, you can literally come up here, work agriculture for 2 or 3 months, earn a year's worth of salary, and go home, as long as they can go back and forth. So, just talk a little bit about how the Bracero program worked and why it was ended.

Mr. ROSENBLUM. Well, so the Bracero program was a very large, mostly—eventually all-agricultural guest-worker program. At its peak, it admitted about 450,000 Mexican temporary workers a year. It did succeed in, for the most part, most Mexican immigrants working in the United States during the program worked in the program. There was certainly some leakage. Some people left and became unauthorized immigrants, but I think the view is that a lot of people moved back and forth—it was a circular program—the way it was intended.

I think the program was very criticized on the left because, although it had wage and working condition guarantees, they were not enforced, and this is an issue that will matter in any new or expanded temporary worker program we have today. I mean, to say you are going to have wage and hour guarantees and working con-

ditions guarantees does not mean very much if they are not going to be enforced. And, when you look at the—so, just to give one quick statistic, between 2009 and 2013, there were 251,000 H-2B visas issued and 60 H-2B employers investigated. So, just to put wage and hour requirements on paper does not mean they will be enforced, and so that was what the real critique of the Bracero program was—

Chairman JOHNSON. I would argue, just passing a law does not necessarily mean we are going to fix the program.

Mr. ROSENBLUM. Right.

Chairman JOHNSON. And, Mr. Johnson, I hate to pick on you, but, again, I just kind of want to go back, because I hear it all of the time, if we just would have passed the Senate comprehensive immigration bill, literally, everything would be coming up roses and we would have fixed this problem.

I just want to go back to, from my standpoint, why this just was not going to work. So, you have 8.1 million undocumented workers in this country. The Senate bill called for 90 percent control of the border, basically, when we have heard testimony, again, it is maybe only 30 or 40 percent, maximum 75 percent. We have heard other things. We have 40 to 50 percent. Nobody knows. That is the problem. Nobody knows.

So, we have a guest worker program, a number of guest worker programs, just quick off the top of my head, maybe allowing a half-a-million workers of the 8.1 million. So, that is 7.5 million workers. What is happening to those folks? I mean, how was this ever possibly going to work?

Mr. JOHNSON. Senator—

Chairman JOHNSON. And, again, I will stipulate, I realize it was a negotiated bill, but I am just trying to get to the point, this was not a panacea. This was not the solution to the problem. Trying to find solutions, I am afraid I have to highlight that reality so that we do not delude ourselves saying, all we had to do was pass that bill and we would have fixed it. We would not have fixed it. Unless I am wrong. Tell me where I am wrong.

Mr. JOHNSON. Senator, I worked 10 years in the House as a staffer. I would never call what came out of the Senate a perfect bill, just as a matter of principle. [Laughter.]

Chairman JOHNSON. Well, again, would it have any chance of working even slightly?

Mr. JOHNSON. We always thought there would be changes in the House and we always told our negotiators in the House, let us do something different and let us meet in conference. So, we knew there had to be improvements along the road.

The Senate bill was—yes, I know you do not want me to say it to you—it was a matter of compromise, but it got us down the road. And, no, it would not have worked perfectly. There is no perfect mousetrap, but at least it would have gotten—

Chairman JOHNSON. What would have happened to the 7.5 million people in this program? I mean, what would have happened? Do you really—when do you think—

Mr. JOHNSON. Well, no—

Chairman JOHNSON. When do you think it would have changed from 90 percent—

Mr. JOHNSON. I think you are missing the——

Chairman JOHNSON [continuing]. Over the border?

Mr. JOHNSON. The 7.5 million, who I think you are referring to, are the undocumented who are here.

Chairman JOHNSON. They are working right now——

Mr. JOHNSON. Right.

Chairman JOHNSON. The bill is——

Mr. JOHNSON. No, they would——

Chairman JOHNSON [continuing]. Calling for about a half-a-million, but again, you would not——

Mr. JOHNSON. Right, they would——

Chairman JOHNSON [continuing]. None of those things would kick in until we had 90 percent effective control of the border, which I am seeing as kind of a tough thing to do in any short time period.

Mr. JOHNSON. Well, I think how you would have defined effective or not would——

Chairman JOHNSON. Well, I think the definition——

Mr. JOHNSON. The problem of triggers, actually, because triggers are no good unless you can define what the trigger is, because then you would never trigger the trigger, and that was an issue of definition that, I think, would have needed some more work——

Chairman JOHNSON. I guess my point—we had a real timing problem here.

Mr. JOHNSON. But they would have been put on a sort of probationary status that would have allowed them to work. However, they could not become citizens, at the earliest, within 13 years. So, during that probationary period, they would have been tested out, had to keep their nose clean, keep a job. If they lost their job, I think, 60 days, they would have been deported. So, there was a process. That was different than the process we created for the temporary-worker programs.

In past bills, I think the McCain-Kennedy bill, we actually had a system by which the undocumented would move through the expanded temporary-worker programs. We did not do that this time—not we—you guys did not do that this time around.

Chairman JOHNSON. I was not——

Mr. JOHNSON. You were not. So, in those cases—but, in the Senate bill, the legalization problem was separate from the temporary-worker program issue, which was the AFL-Chamber deal, than the undocumented.

Senator, the Senate bill was not perfect. There is no perfect mousetrap. It could have used some work. We would have done that if we had been able to get to conference and I think we could have gotten a decent bill out of a conference.

Chairman JOHNSON. OK. Does anybody else want to speak to that? Mr. Passel.

Mr. PASSEL. It seems to me you are talking about two different things. One is the stock of people who are here and the other is the new flows of people who are coming. The stock of people who are here is this 8.1 million workers, and what gets done with them is up for discussion.

The question is, what about the new flows of people, and what we have seen. If you look back at the periods you were talking

about in—oh, right around the first 5 years of this century, there were on the order of 800,000 new unauthorized immigrants coming into the country every year with, based on the data we have, 500,000 to 600,000 of them were coming into jobs.

For Mexico, the peak flows of people were around 2000, when over 700,000 Mexicans came to the United States. Almost 80 percent of them came as unauthorized immigrants.

What we are seeing now in the case of Mexico is 150,000 people coming every year, and 80 percent of them are coming as legal immigrants. So, the number of folks that are coming every year as unauthorized immigrants is down to maybe a third of what it was at its peak. We are talking about maybe 200,000 or so. And, roughly that many are leaving each year. So, that is why the numbers of unauthorized immigrants are constant.

So, I do not know what sorts of programs might work or might not work, but the current flows of people who are coming as unauthorized immigrants are much smaller than they were 10 15 years ago.

Chairman JOHNSON. OK. Well, thank you. I really do not have any further questions.

Did you want to ask a couple more questions, or—OK. Go ahead.

Senator CARPER. Thank you. Mr. Chairman, we are drilling down on five recommendations made by, or characteristics or qualities that Dr. Zavodny suggested should be used and kept in mind as we design a guest worker program, if you will.

The last one we got to, it says—I will just read it. It says, your words, Dr. Zavodny, more interior enforcement, particularly at workplaces, is vital to the success of a guest worker program. Requiring all employers to use E-Verify would help choke off the jobs magnet that attracts most unauthorized immigrants. That is what you said, and are you going to stick to that?

Ms. ZAVODNY. Yes.

Senator CARPER. OK. Dr. Rosenblum, would you respond?

Mr. ROSENBLUM. Sure. So, let me make two points. One, more worksite enforcement is essential. It cannot just be E-Verify, as Dr. Zavodny also testified. What we have seen in E-Verify States is more off-the-books employment. So, E-Verify does not prevent off-the-books employment. It does not prevent identity fraud, either, so you have to have physical inspections at work sites to check and see if people are actually unauthorized and to check and see that they are actually enforcing whatever wage guarantees are in there, because those are the two huge problems that we are not upholding the provisions that are written into law.

And, just one other point, if I could quickly make. There is this mantra of, well, it should be market driven, and free markets, we all love free markets. But, what we are talking about, making a free-market, temporary-worker program, is expanding labor and not changing business. So, to just open it up and make it free-market does not help U.S. workers. You have to open it up and make it free-market and include protections for U.S. workers. So, that can either be through a higher fee or through some kind of elaborate non-market recruitment mechanism. So, to just make it free-market, what that does is undermines the positions of U.S. workers, unless you also build in protections.



Senator CARPER. Thank you for making that point.

Mr. Johnson, what do you think—

Mr. JOHNSON. Marc is putting out a lot of things there. First of all, the free market is a misused term here. There are many protections laden throughout existing temporary-worker programs. There are many protections we put into the AFL-Chamber deal, and there would be many protections in any new temporary-worker program.

So, the free-market or market-driven is a little bit of a misnomer here, including paying exactly what you are paying U.S. workers to the immigrant workers, or prevailing wage, which could actually be slightly higher. If the community, if the wage is higher, the immigrant worker in some cases would be paid more. The unions like that because it deters so-called hiring. There would not be recruitment from the domestic labor. There are a lot of protections that would be interlaid in any of these kinds of programs.

With regard to enforcement, my members comply with the law as long as they can understand it. It is obviously not always clear. But they are concerned about over-zealous regulators coming in on workplace raids, on fishing expeditions. And, as long as there is some kind of deterrent built into these kinds of negotiations that make sure that what the government is doing, they do it carefully, and when they overstep their bounds, there is some kind of penalty for doing that, we are all in. But, just adding more Wage and Hour Inspectors to the Department of Labor or whatever because it feels good, because there is a suspicion employers are out there violating the law, is not going to pass muster with us.

Senator CARPER. OK. Mr. Garza.

Mr. GARZA. I would agree with Mr. Johnson, and this is where the Libertarian in me comes out, that we resist further excessive enforcement in the private sector. I think we have enough bureaucrats. We have enough laws. Fines are good enough. Any addition to that, I think, would have to be resisted if not completely looked at.

Senator CARPER. Dr. Passel.

Mr. PASSEL. Again, I have no position on this.

Senator CARPER. OK. We have several million people in the country who are looking for work. Our congressional delegation has hosted over the last several years job fairs up and down our State, and we just did our latest one in the central part of our State on Monday. We had, I think, oh, maybe 40 or more employers who came. We had close to 500 people who came looking for work. I made some brief remarks to the people that were there as we kicked it off with Senator Coons and with Congressman John Carney.

There are several million people who are looking for work, and some of them—a bunch of them are long-time unemployed. And, as we all know, there are several millions of jobs that need to be filled and we do not have—the employers have a tough time finding the skills. So, a lot of the folks who are here looking for work, a lot of jobs that we hear need people, there is a mismatch in the skills.

And so, part of what a guest-worker program would be able to do is help better fill those jobs. Meanwhile, we still have all these people over here who need work and they need to be productive and making contributions in our society.

So, part of what we had at our job fair were University of Delaware, Delaware State University, Delaware Technical Community College, Wilmington University, and other job programs, training programs for folks, including those who work with our GIs coming back and who have a great, robust G.I. Bill, as you know.

But, I also have concerns, and some of you voiced these, as well, about sometimes you have employers who do not play by the rules and who do not—they hire folks they know that they are illegal and they hire them and they do not pay them well, they do not treat them well. And, sometimes, you have folks who are over here in the couple million people looking for work, they want to work desperately. They want to work desperately, and they are just fearful that somebody else is going to come in from another country and maybe work as hard as the person desperate for work here.

How do we, on the one hand, try to be fair to the American or the Americans who are desperate for work, looking for work, maybe do not have the skill sets, but maybe they are in the wrong State. Maybe they just do not live in the right part of our country. What do we do about them? How do we sort of protect their interest, if you will? And, Dr. Zavodny, if you have any thoughts on that, I would welcome them.

Ms. ZAVODNY. Sure.

Senator CARPER. I just put my—I am the Golden Rule guy—I think we all are—and how do I want to be treated if I were in their shoes? That is the question I am sort of asking here.

Ms. ZAVODNY. The long-term unemployed are certainly a concern, that as the economy has begun growing again and the unemployment rate is falling, we do have a pool of people who are going to have a difficult time finding a job, and some of them have exited the labor force completely and we would like them to come back into the labor force and be able to make the economic contribution that they can and that they want to, certainly.

So, what I would think is the best solution here, as Marc Rosenblum has mentioned, is to have fees for visas and use those fees for training programs that would operate probably through community colleges. We have an excellent system of community colleges in the United States that work with local businesses and local workforce development agencies to ensure that workers in the community develop the skills that businesses in the community want, and I think that that is the best solution that we could come up with.

I do not think it is ever going to be perfect. Not everyone who wants a job is going to have one at every point in time. But, cutting off immigration is not the way to help unemployed natives find jobs.

Senator CARPER. OK. Others, please. Just briefly. Dr. Rosenblum.

Mr. ROSENBLUM. I mean, yes, obviously, I agree with Madeline since she agrees with me— [Laughter.]

But, to have more programs to help U.S. workers with training and things like that would be very important. I just also observe that, there are, as Randy points out, there are all kinds of provisions in the existing H-2 programs that try to put U.S. workers first in line, but those are not well designed, and the reason is that

employers want to make their own hiring decisions. But, the two audits that we have of those programs found that in 1998, just 0.05 percent of people who applied to the certification process ended up hiring a U.S. worker, and in 2003, just 2 percent.

So, those programs are not the answer, so we need some other answer, and I think using fees to fund better retraining and job placement is a better answer. And then, you do let the employers make their own decisions and you put the U.S. workers in a better position to compete for those jobs.

Chairman JOHNSON. Let me step in here, because we are going to start having votes and I want to wrap up. I do want to give everybody a chance to summarize if you have a final quick thought.

I will make a comment, though. We have a lot of job-training programs. I would check the effectiveness of those, as well, on the Federal level. We spend a lot of money.

I do have two questions, either in your closing statements or before that, I would like you to respond to. One of the points I was making when I was talking about trying to incorporate a guest worker program would be something where the States have far greater participation in it. Let the States set the number of guest workers for their State in their different industries. Let them set the prevailing wage rates. I mean, I would kind of like anybody who would want to comment on that, quickly.

And, then, the other one. I did talk about the hearing they had in the Judiciary Committee, I think it was last week. It was pretty powerful testimony running totally counter to what we are talking about here in terms of guest workers. And again, I would like somebody on this panel providing some kind of rebuttal, if you can.

But, I will leave that, and then we will just go down the line and let everybody have a closing thought. Does anybody want to respond to those first two points? Mr. Johnson.

Mr. JOHNSON. Well, Senator, first of all, on the State idea, I mean, because you would have to authorize the States to do that, I think that because labor markets on one hand, labor markets are not as national as we like to pretend they are. Employers have to recruit from certain pockets of workers, though it depends on the kind of job they are recruiting for. But, I think State boundaries might be too—I am just throwing this out—

Chairman JOHNSON. Sure.

Mr. JOHNSON [continuing]. An artificial boundary for setting shortages, because workers, of course, can cross State lines, et cetera—

Chairman JOHNSON. Yes, but the employer is confined to a State, potentially, but—

Mr. JOHNSON. Right, but Metropolitan Statistical Areas, depending on the certain kind of jobs, I mean, it is an interesting idea.

I would say defining shortages, again, by occupation is a difficult conundrum which lots of experts quote-unquote, will disagree on how you do that, as distinguished from a more market-driven employer-based system, which is not sort of artificially driven by quotas set by the government.

Chairman JOHNSON. OK. Well, again, I would hope that those industries would be inputting the system on a State basis rather than inputting to a national model, national number.

Does anybody else want to comment on that or speak to the Senate Judiciary Committee—

Mr. GARZA. I like the idea of Federalism. Anything that decentralizes decision-making from Washington and gets it closer to the private sector when it comes to responding to market forces in real time, we would be open to that.

Chairman JOHNSON. OK. Does anybody want to—yes.

Ms. ZAVODNY. As much as I think States' rights are important, Federalism is good, I do not think it works here with a guest-worker program because you want the portability, the ability of workers to move to better jobs. And, if you restrict them to remaining in the State that brought them in—

Chairman JOHNSON. It would be a problem.

Ms. ZAVODNY [continuing]. Then they cannot do that.

Chairman JOHNSON. OK.

Mr. JOHNSON. Senator, I would, with regard to the Senate hearing in the Judiciary, we did submit a lengthy statement on that. I am sure Senator Grassley and Senator Sessions will probably disagree, but frankly, the witnesses were not—it was not a balanced panel. Had the panel been more balanced, there would have been more people talking about the shortages of science, technology, engineering, and math (STEM) workers and what employers do now to try and recruit in the domestic labor force before they use the H-1B program. So, I do not think it was a fair and balanced hearing with regard to what is really going on out there in the real world under the H-1B program.

Chairman JOHNSON. Well, I would appreciate information that would be the—

Mr. JOHNSON. Good.

Chairman JOHNSON [continuing]. Bring the fair and balance to that, because, again, I am trying to determine the reality of the situation.

We will start with Mr. Passel there, and if you have a quick closing thought here.

Mr. PASSEL. I think we are at a very interesting time. We have seen the numbers drop and then we have seen the numbers level off in recent years. The driver of the growth in the unauthorized population over the last 30 years has been in Mexico, and right now, the number of unauthorized Mexicans in the United States is continuing to go down, meaning that more are leaving than are coming. And, we have gone through a period here of about 6 or 7 years where what seems to have happened in Mexico is that the United States is not viewed as the primary outlet for labor. Also, Mexico as a result of falling birthrates, does not have the population surpluses that it used to have.

So, the dynamic going forward could be quite different, especially with regard to Mexico and the Southern Border, so that, yes, apprehensions at the Southern Border went up in the last year, but the apprehensions of Mexicans actually went down.

Chairman JOHNSON. Right. So, that speaks to the supply and demand—

Mr. PASSEL. Yes.

Chairman JOHNSON [continuing]. Equation changing. Mr. Garza.

Mr. GARZA. I would say that in the absence of a reform that would put people on a path to citizenship, we feel that a work visa program is a viable alternative that would offer a predictable legal and needed workforce necessary to meet our Nation's labor demand. Immigrants seeking opportunity, willing to work hard, and make sacrifices for their children to improve their lot in life, that is the American dream.

Chairman JOHNSON. Thank you. Ms. Zavodny.

Ms. ZAVODNY. We are never going to have any unauthorized immigrants, and if we do, I do not want to live here, because what would that mean? It would mean we had a horrible economy and we had no civil liberties, right?

And so, the goal really needs to be to minimize or at least reduce unauthorized immigration substantially, and the best way you are going to do that is to have a viable guest-worker program, in addition to the interior enforcement.

Chairman JOHNSON. OK. Mr. Johnson.

Mr. JOHNSON. Well, I agree with Madeline on that. Senator, I agree with Madeline on that, and it is a two-prong combination of expanded temporary-worker programs and a sensible pathway to legalization.

Chairman JOHNSON. OK. Mr. Rosenblum.

Mr. ROSENBLUM. I would echo those comments and observe that we really have made extraordinary investments at the border and in the interior on the enforcement side. And, to go to your point, Mr. Chairman, about sequencing and triggers, I mean, in terms of sequencing, we have done a lot of enforcement first, and the way we are going to get a bigger return on those investments is by addressing these demand-side issues.

Chairman JOHNSON. OK. Well, again, thank you all for all of the hard work that went into your testimony and your thoughtful answers to our questions.

This hearing record will remain open for 15 days, until April 10 at 5 p.m., for submission of statements and questions for the record.

This hearing is adjourned.

[Whereupon, at 12:02 p.m., the Committee was adjourned.]



## A P P E N D I X

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**Opening Statement of Chairman Ron Johnson**  
***Securing the Border: Defining the Current Population***  
***Living in the Shadows and Addressing Future Flows***  
**March 26, 2015**

*As prepared for delivery:*

Good morning and welcome.

The purpose of this hearing is to define the current make up of those currently living in the shadows. Essentially, illegal immigration occurs in two ways: either when immigrants cross the U.S. border undetected or when they enter lawfully but overstay their visa. Today, it is estimated that 11.2 million, or 3.5 percent of the U.S. population is unauthorized.

This hearing will examine where this population lives and works. It will also explore some of the factors that drove their illegal immigration in the first place. For example, the difference between what a potential illegal immigrant can earn in the U.S. as compared to that person's country of origin is a significant factor that influences migration. While the wage gap between the U.S. and Mexico has decreased, economists suggest the differential is still great enough to encourage migration. Additionally, the wage gap between the U.S. and Central American countries is even greater.

Real border security is not only about putting resources on the border. In fact, resources might have contributed to some of the problems. An increase in border security has created the unintended consequence of eliminating circular migration, in effect forcing those who previously entered and exited the U.S. for seasonal or other work to remain permanently in the country.

In fact, before the U.S. border build up, roughly half the illegal immigrant population would return home within one year, and 75 percent left within two years. But, as the costs of crossing back and forth rose, this began to change. Today, only one in five immigrants returns each year to Mexico.

This of course is not to diminish the need for resources to secure our borders. But, when considering border security legislation, it is important for this committee to explore how we can eliminate or greatly reduce the incentives for illegal immigration. For many, that incentive is the opportunity to work. Making that a legal process will remove some of the pressure at our borders.

Today, our witnesses will provide insights into the current unauthorized population, as well as considerations on how to incentivize orderly legal migration consistent with the values and the economic and national security interests of the United States.

Thank you for your willingness to testify, I look forward to your testimony.

**Opening Statement of Ranking Member Thomas R. Carper:**  
***“Securing the Border: Defining the Current Population Living in the Shadows***  
***and Addressing Future Flows”***  
***March 26, 2015***

*As prepared for delivery:*

Thank you, Mr. Chairman, for calling today’s hearing focusing on the undocumented population in the United States. Too often, our border security discussions begin and end with how to create more and better barriers at our southern border. As important as that is, I think it is critical to look deeper and ask ourselves at least three key questions:

1. Who are the undocumented individuals living here?
2. How and why did this undocumented population come to our country?
3. What is a pragmatic way forward for these individuals and our country?

Finding the answers to these questions will help us better secure our borders and also finally address the immigration issues that Congress has been debating for a number of years now. We are told there are an estimated 11.2 million people living in the United States without permission. We probably don’t know as much about them as we’d like, but some things are clear.

First, most of these individuals are productive, law-abiding members of our communities. Indeed, some are children or young adults who literally do not remember any other home. Some don’t even know they were born in another country. Many others are the parents of U.S. citizens.

Second, for all the focus on unauthorized entries along our southern border, experts believe that close to half of the undocumented population entered our nation legally and then overstayed their visa or violated its terms.

This brings me to my third point: Jobs. Jobs are why the lion’s share of undocumented immigrants come to the United States in the first place, and it’s why they stay. We need to get serious about enforcing laws against the hiring of undocumented immigrants. And, we need to take a hard look at our labor needs and provide adequate ways for immigrants to work here legally when we do need help.

I think all three of these factors point in one direction: comprehensive immigration reform.

Congress needs to begin a new and real debate on a comprehensive and thoughtful immigration policy for the 21st Century. First, we need a policy that is fair. One that will significantly reduce our nation’s budget deficit and one that will strengthen the economic recovery now underway. That policy must also continue to slow the flow of undocumented immigrants to our border with Mexico and allow those living in the shadows to step forward, undergo background checks, demonstrate proficiency in English, remain gainfully employed, stay out of trouble and contribute to our nation lawfully



Last Congress, two-thirds of the Senate came together and overwhelmingly passed such a measure. It wasn't perfect, but it took significant steps to fix our badly broken immigration system while reducing our deficit by nearly \$1 trillion over the next 20 years and increasing our GDP by 5 percent. Had it been enacted, it also would have improved our security, in part by making it easier for border security officials to focus on the people or things that pose a true risk – such as the transnational threats we heard about earlier this week.

I know that some of my colleagues would rather focus on one or two pieces of the immigration and border security puzzle - for example, how many Border Patrol agents we should hire and how much fencing we should build along our borders. But the issues and challenges we've been discussing in these hearings are more complex than that, and they certainly can't be solved solely with more security. I continue to believe our best hope of progress is trying to tackle several of these areas comprehensively.

Again, the bill the Senate passed last year wasn't perfect, but it was a very good start and something members of both parties were able to come together around. I hope we can recapture that spirit and get to work on a bill right away.

I also think we must look beyond our border and try to support efforts to address the root causes that are pushing some people to our country – in particular the dangerous and sometimes desperate circumstances some Central Americans face, as we heard yesterday.\*

With that, I look forward to hearing from our witnesses.

Written testimony submitted to

U.S. Senate Committee on Homeland Security and Governmental Affairs

Hearing on:

Securing the Border:

Defining the Current Population Living in the Shadows and Addressing Future Flows

Submitted by:

Jeffrey S. Passel  
Senior Demographer  
Pew Research Center  
Washington, DC

March 26, 2015

## Unauthorized Immigrant Population: National and State Trends, Industries and Occupations

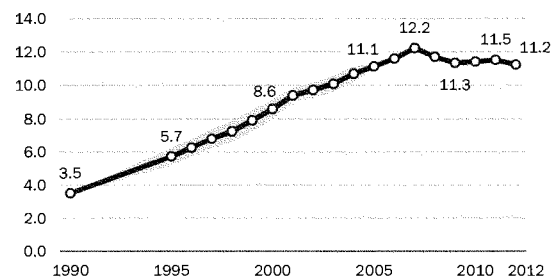
Chairman Johnson, Ranking member Carper and members of the Committee, thank you for the invitation to testify at this hearing about estimates of the numbers and trends of unauthorized immigrants, their distribution across states and their role in the labor force. I am appearing as the principal author of several recent Pew Research Center reports on these topics. The Pew Research Center does not take positions on policy issues. We are a nonpartisan “fact tank” that generates information we hope will be of value to policymakers. My testimony today summarizes some of the key findings of our research.

In my written statement, I will cover a range of research findings about unauthorized immigrants: I start with national and state trends in the size and growth of the unauthorized immigrant population. These trends are analyzed with regard to the national origins of the unauthorized immigrants, focusing on those from Mexico. Then I turn to a discussion of the number of unauthorized immigrants in the U.S. labor force and changing patterns over time. Finally, I examine the industries and occupations where unauthorized immigrants are represented with a discussion of differences across the states. This testimony draws heavily from a report the Pew Research Center released last November (Passel and Cohn, 2014) and a new report we are releasing today (Passel and Cohn, 2015).

The unauthorized immigrant population in the U.S. peaked at 12.2 million in 2007 after growing steadily by about half a million per year from 3.5 million in 1990. After 2007, the trend changed abruptly and the numbers dropped dramatically by about 1 million over the next

FIGURE 1

### Growth in Unauthorized Immigration Has Levelled Off *In millions*



Note: Shading surrounding line indicates low and high points of the estimated 90% confidence interval. Data labels are for 1990, 1995, 2000, 2005, 2007, 2009, 2011 and 2012. The 2009-2012 change is not statistically significant at 90% confidence interval.

Source: Passel, Jeffrey S. and D'Vera Cohn, 2014, "Unauthorized Immigrant Totals Rise in 7 States, Fall in 14; Decline in Those From Mexico Fuels Most State Decreases." Washington, D.C. Pew Research Center's Hispanic Trends Project, November.

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two years to 11.3 million in 2009 as the number of new unauthorized immigrants arriving plummeted and large numbers left the country. Since 2009, the national unauthorized immigrant population has remained essentially unchanged as arrivals and departures have come into rough balance. (See Figure 1.)

From 1990 to 2007, the number of unauthorized immigrants increased in every state, but growth was slower in the six states with the largest unauthorized immigrant populations than in the rest of the nation as a whole. California, the state with the largest number of unauthorized immigrants in all years, experienced the largest numerical growth, but its 88% increase from 1990 to 2007 was slower than that of other large states and nearly all smaller states. As a group, the other five largest states (Florida, Illinois, New Jersey, New York and Texas) experienced growth in their unauthorized immigrant population at the national average of 250% over the period. Meanwhile, the unauthorized immigrant population in the rest of the country increased almost sevenfold, from 700,000 in 1990 to 4.7 million in 2007.

These growth differentials led to a marked shift in the distribution of unauthorized immigrants across the country. The share in California dropped to 23% in 2007 from 42% in 1990. The share in the other five large states was unchanged at 38%, but the share in the rest of the country essentially doubled, to 39% in 2007 from 20% in 1990. With the overall decreases in the unauthorized immigrant population since 2007, these shifts came to a halt.

### **Post-Recession Trends in Unauthorized Immigrant Populations**

The U.S. unauthorized immigrant population has leveled off nationally after the Great Recession, but state trends have been more volatile. From 2009 to 2012, according to recent Pew Research Center estimates, the population of unauthorized immigrants rose in seven states and fell in 14.<sup>1</sup>

Five East Coast states were among those where the number of unauthorized immigrants grew from 2009 to 2012—Florida, Maryland, New Jersey, Pennsylvania and Virginia. Numbers also rose in Idaho and Nebraska, according to the center's estimates. (See Map 1.)

Six Western states are among those with declines in unauthorized immigrant populations from 2009 to 2012—Arizona, California, Colorado, Nevada, New Mexico and Oregon. Other states with decreases over that period are in the South (Alabama, Georgia and Kentucky), the Midwest (Illinois, Indiana and Kansas) and the Northeast (Massachusetts and New York).

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<sup>1</sup> Seven states where the unauthorized immigrant population is too small to permit a reliable analysis of trends were excluded: Maine, Montana, North Dakota, South Dakota, Vermont, West Virginia and Wyoming.

The differential growth across states is related to patterns of change in Mexican and non-Mexican unauthorized immigrant populations. According to a Pew Research analysis, the losses in 13 of the 14 states were due to drops in the number of unauthorized immigrants from Mexico, who make up the majority of unauthorized immigrants. The exception was Massachusetts, where the overall decrease was due to a decline in the number of unauthorized immigrants from other countries.

In six of the seven states where populations of unauthorized immigrants grew from 2009 to 2012, it was because the number of non-Mexicans increased; the number of Mexicans declined or did not change. The exception was Nebraska, which had a small but statistically significant increase in Mexican unauthorized immigrants in those years.

There is wide variety in state populations of unauthorized immigrants, according to the Pew Research estimates. More than half the 2012 unauthorized immigrant population (60%) lived in the six states with the largest numbers of such immigrants—California, Florida, Illinois, New Jersey, New York and Texas. At the opposite end, six states (Maine, Montana, North Dakota, South Dakota, Vermont and West Virginia), had fewer than 5,000 unauthorized immigrants each in 2012. Unauthorized immigrants accounted for 3.5% of the 2012 U.S. population of nearly 316 million and 26% of the nation's 42.5 million foreign-born residents, according to the center's estimates. Both shares were larger in 2007, the peak year for the nation's unauthorized immigrant population, at 4.0% and 30%, respectively.

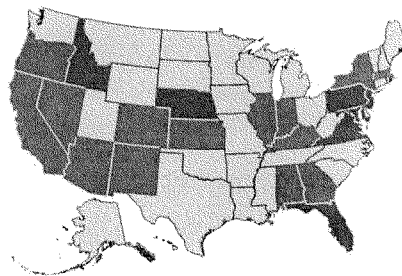
Most of the states with the largest numbers of unauthorized immigrants also have relatively high shares of unauthorized immigrants. The six states with the largest unauthorized immigrant populations—California, Florida, Illinois, New Jersey, New York and Texas—are among the states with the 10 highest shares of unauthorized immigrants in their overall populations. (In addition to these six states, Nevada, where unauthorized immigrants account for 7.6% of the population, ranks first; Arizona, at 4.6%, is sixth; Maryland, 4.3%, is seventh; and Georgia, 3.9%, is eighth.)

MAP 1

### Unauthorized Immigrant Populations Rose or Fell in 21 States

*States where the number of unauthorized immigrants ... from 2009 to 2012*

■ INCREASED ■ DECREASED ■ NO CHANGE



Note: Changes shown are based on 90% confidence interval.

Source: Passel, Jeffrey S. and D'Vera Cohn, 2014. "Unauthorized Immigrant Totals Rise in 7 States, Fall in 14: Decline in Those From Mexico Fuels Most State Decreases." Washington, D.C. Pew Research Center's Hispanic Trends Project, November.

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Similarly, states with relatively lower numbers of unauthorized immigrants tend to have lower shares in the overall population; in 27 states, unauthorized immigrants make up less than 2.5% of the population. (For all states, estimates of the unauthorized immigrant population, the number in the labor force, and their share of the total population and labor force can be found in Appendix Table A1.)

In addition to unauthorized immigrants, the nation's foreign-born population of 42.5 million people in 2012 consisted of 11.7 million legal permanent residents, 17.8 million naturalized citizens and 1.9 million legal residents with temporary status (including students, diplomats and "high-tech guest workers").

### Origins of Unauthorized Immigrants

Mexicans are a majority of unauthorized immigrants (52% in 2012), but both their numbers and share have declined in recent years, according to Pew Research estimates. Although the U.S. population of unauthorized immigrants was stable from 2009 to 2012, the number of Mexicans in this population fell by about half a million people during those years. According to the Pew Research Center estimates, there were 5.9 million Mexican unauthorized immigrants in 2012, compared with 6.4 million in 2009 and 6.9 million in 2007. (See Figure A1 in Appendix A.) The decline likely resulted from both an increase in departures to Mexico and a decrease in arrivals from Mexico (Passel, Cohn and Gonzalez-Barrera, 2012).

After top-ranked Mexico, there is a large drop in the numbers of unauthorized immigrants from other specific countries. El Salvador, with 675,000 unauthorized immigrants in 2012, is the second-largest source. It is followed by Guatemala (525,000), India (450,000), Honduras (350,000), China (300,000) and the Philippines (200,000). Rounding out the top 10 in 2012 are Korea (180,000), the Dominican Republic (170,000) and Colombia (150,000).

As the Mexican numbers continued to drop between 2009 and 2012, unauthorized immigrant populations from South America and from a grouping of Europe and Canada held steady. Unauthorized immigrant populations from Asia, the Caribbean, Central America and the rest of the world grew slightly from 2009 to 2012.

Among the 44 states (and District of Columbia) for which data about national origin are available,<sup>2</sup> Mexicans make up the majority of all unauthorized immigrants in 26 of them. The four states

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<sup>2</sup> This analysis excludes states where the unauthorized immigrant population is too small to permit a reliable breakdown of the unauthorized immigrant population into subgroups: Maine, Montana, North Dakota, South Dakota, Vermont and West Virginia.

where Mexicans make up more than eight-in-ten unauthorized immigrants are all in the West—New Mexico (89%), Arizona (84%), Idaho (83%) and Wyoming (82%).

States with low shares of Mexicans include some in the Northeast: New Hampshire (7%), Rhode Island (6%) and Massachusetts (3%). Hawaii's share was 7%.

Even in states where Mexicans are not the majority of unauthorized immigrants, they are frequently the largest national origin group—36 states have more Mexicans than any other unauthorized immigrants. Mexicans are not the largest group in three New England states—New Hampshire, where India is the largest birth country; Massachusetts with El Salvador; and Rhode Island where Guatemala is the largest. In the area around the nation's capital (the District of Columbia, Maryland and Virginia), unauthorized immigrants from El Salvador constitute the largest group. Hondurans outnumber Mexicans in Louisiana. In Alaska and Hawaii, unauthorized immigrants from the Philippines are the largest group, representing a majority of Alaska's unauthorized immigrant population and almost half of Hawaii's.

## Unauthorized Immigrants in the Labor Force

The 8.1 million unauthorized immigrants who were working or looking for work in 2012 made up 5.1% of the labor force or about one-in-twenty U.S. workers. Both of those estimates are unchanged from 2009. The number in the labor force has remained between 8.1 million and 8.3 million since 2007. (See Figure A2 in Appendix A.) The share of unauthorized immigrants in the workforce peaked in 2007, at 5.4%.

The share is markedly higher in some states, especially those with high shares of unauthorized immigrants in the population. Among adults ages 16 and older who are working or looking for work, unauthorized immigrants represent the highest share in Nevada (10.2% in 2012); Nevada also has the highest share of unauthorized immigrants in the overall population (7.6%). The share in the labor force also is relatively high in California (9.4%) and Texas (8.9%), which rank second and third in the unauthorized immigrant share of the total population. (Appendix Table A1 shows the number and share of unauthorized immigrants in the labor force for each state.)

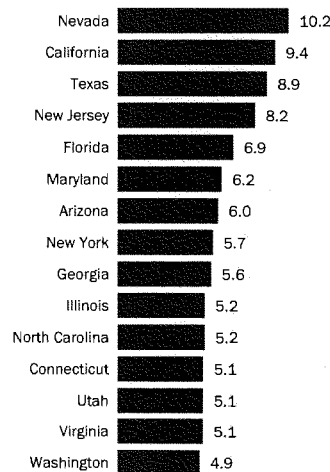
Unauthorized immigrants are more likely than the overall U.S. population to be of working age and less likely to be young or older ([Passel and Cohn, 2009](#)). That is one reason that the unauthorized immigrant share of the labor force is higher than its share of the population overall.

Unauthorized immigrants of working age have substantially different patterns of labor force participation than do people born in the U.S. Unauthorized immigrant men of working age are considerably more likely to be in the

FIGURE 2

### States with Largest Shares of Unauthorized Immigrants in the Labor Force, 2012

Unauthorized immigrants % of state's labor force



Note: Percentages calculated from unrounded numbers. Differences between consecutive ranks may not be statistically significant. States with the same shares are shown alphabetically.

Source: Passel, Jeffrey S., and D'Vera Cohn, 2014. "Unauthorized Immigrant Totals Rise in 7 States, Fall in 14; Decline in Those From Mexico Fuels Most State Decreases." Washington, D.C. Pew Research Center's Hispanic Trends Project, November.

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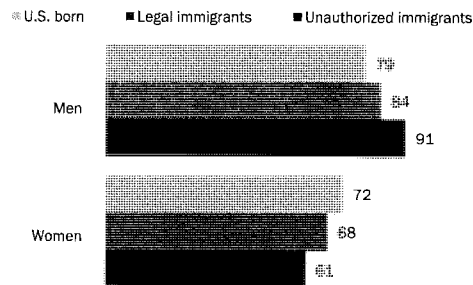


workforce than U.S.-born men (91% versus 79%). For women, the opposite is true; only 61% of unauthorized immigrant women are in the labor force, compared with 72% of U.S.-born women. For both genders, substantial portions of the U.S.-born population of working age are not in the labor force because they are attending school, retired or disabled, but that is true for only a small share of unauthorized immigrants. A major difference for women is that a higher share of unauthorized immigrant women say they are not

working and have young children at home (22%) compared with other immigrants (13%) and U.S.-born women (7%). While there have been some modest changes in labor force participation rates over the past 20 years, the participation of unauthorized immigrant men and women, relative to the U.S.-born population and legal immigrants, has remained essentially unchanged since 2005.

FIGURE 3

### Share in Labor Force for Ages 18-64, by Gender and Status, 2012



Source: Pew Research Center tabulation from augmented 2012 American Community Survey data from Integrated Public Use Microdata Series (IPUMS)

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### Concentrations of Unauthorized Immigrants: Industries

Because unauthorized immigrants tend to have less education than people born in the U.S. or legal immigrants, they are more likely to hold low-skilled jobs and less likely to be in white-collar occupations; further, their status limits job opportunities. Consequently, unauthorized immigrants tend to be overrepresented in certain sectors of the economy. Of all unauthorized immigrant workers, 22% are in services (professional, business and other<sup>3</sup>), 18% in the leisure and hospitality sector and 16% in construction (Table 1). These three industry sectors encompass 55% of unauthorized workers but only 31% of U.S.-born workers. Manufacturing (13%) and agriculture (5%) also have relatively large shares of the unauthorized immigrant workforce. (Data on the composition of all major industries are shown in Appendix Table A8.)

<sup>3</sup> These services cover a wide range of industries and businesses from legal services and advertising to employment services, landscaping and waste management to personal services such as dry cleaning, nail salons and religious organizations.

Looked at using another metric—the unauthorized-immigrant share of the total workforce—it becomes clear that they are particularly concentrated in some subsets of each major industry. In 2012, they represented 24% of workers in the landscaping industry, 23% of those in private household employment, 20% of those in apparel manufacturing, 20% in crop production, 19% in the dry cleaning and laundry industry and 19% of those in building maintenance. These figures are much larger than unauthorized immigrants' share of the overall workforce—5.1%. (Figure 4 below shows major industry concentrations. A more extensive listing of detailed industries is shown in Appendix Table A7.)

TABLE 1

### U.S.-born and Unauthorized Immigrant Workers, by Major Industry, 2012

% of each status group's workers who are in each major industry

| Major Industry Group                                                                 | U.S. born | Unauthorized immigrants |
|--------------------------------------------------------------------------------------|-----------|-------------------------|
| Professional, business, & other services                                             | 15        | <b>22</b>               |
| Leisure & hospitality                                                                | 10        | <b>18</b>               |
| Construction                                                                         | 6         | <b>16</b>               |
| Manufacturing                                                                        | 10        | <b>13</b>               |
| Agriculture, forestry, etc. & mining                                                 | 2         | <b>5</b>                |
| Wholesale & retail trade                                                             | 15        | 12                      |
| Education/health services, financial activities, information & public administration | 37        | 12                      |
| Transportation & utilities                                                           | 5         | 3                       |
|                                                                                      | 100       | 100                     |

Note: Based on civilian labor force with a reported industry; **boldface** indicates overrepresentation of unauthorized immigrants compared with U.S. born. For more detailed information on major industry groups see Appendix Table A8.

Source: Pew Research Center estimations based on augmented 2012 American Community Survey data from Integrated Public Use Microdata Series (IPUMS)

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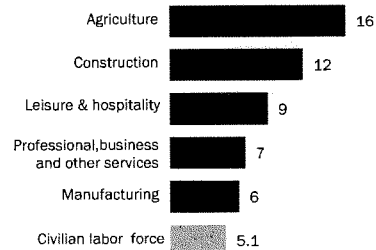
The industry concentrations of unauthorized immigrants vary across the states, depending, in part, on the countries of origin of the immigrants and the nature of each state's economy. We produced estimates of the number of unauthorized immigrant workers by industry in 43 states and the District of Columbia where there are enough unauthorized immigrants in the workforce to provide reliable data. The leisure and hospitality industry has the most unauthorized immigrant workers in 14 states and the District of Columbia, construction does in 11 states and manufacturing does in 11 states. The states where leisure and hospitality is the largest sector for unauthorized immigrants tend to be in the West or Northeast (plus, not surprisingly, Florida). The states where manufacturing is the largest tend to be in the Midwest, and the construction-dominated states tend to be in the South. (Appendix Table A2 shows the largest three major industries in each state together with the share of the state's unauthorized immigrant workers in the industry.)

Looked at another way—using the unauthorized-immigrant share of each industry’s workforce—the picture of industry concentration changes somewhat. In almost half of the states (21 of 43), agriculture is the industry with the largest share of total workers who are unauthorized immigrants; in 10 other states, agriculture is the industry with the second largest share who are unauthorized immigrants. These 31 states are spread in all regions of the country. The agriculture industry ranks first in this regard in every Western state for which data are available, except Alaska and Nevada; in Nevada, it ranks second. The construction industry is also one where the share of workers who are unauthorized immigrants tends to be large (first in 10 states and the District of Columbia, second in 15 and third in nine). As with numbers of unauthorized immigrant workers, the states where the construction industry workforce has the largest share of unauthorized immigrants tend to be in the South. (Appendix Table A4 shows the three major industries in each state that have the largest shares of their workers who are unauthorized immigrants.)

FIGURE 4

### Industries with High Shares of Unauthorized Immigrants, 2012

% unauthorized immigrants of workers in industry



Source: Pew Research Center tabulations from augmented 2012 American Community Survey data from Integrated Public Use Microdata Series (IPUMS)

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### Concentrations of Unauthorized Immigrants: Occupations

Industry classifications tend to contain occupations requiring a range of education levels, whereas occupation classifications tend to include jobs requiring similar skill levels or certifications. Because unauthorized immigrants tend to cluster in low-skilled jobs, they tend to be even more concentrated in specific occupation groups than in specific industries.

Among unauthorized immigrants in the labor force, 33% are service workers, 15% are construction workers and 14% are production and installation workers. Almost two-thirds (62%) of unauthorized immigrant workers have occupations in these three broad categories; by contrast, only half that share (31%) of U.S.-born workers have such occupations. (See Table 2. Appendix Table A9 has data on the composition of all major occupation groups.)

Because they are so concentrated in certain major occupation groups, unauthorized immigrants are a high proportion of workers in some more detailed categories. For example, 26% of farmworkers are unauthorized immigrants, as are 17% of building, groundskeeping and maintenance workers, and 14% of construction workers. Unauthorized immigrants also are overrepresented as a share of food preparation workers and servers (11%), production workers (9%) and transportation and material moving workers (7%) compared with their overall presence in the labor force.

Within these categories, there are some specific, detailed occupations where unauthorized immigrants are even more highly concentrated. They are especially likely to hold certain low-skilled jobs in construction and service categories. For example, unauthorized immigrants are about one-third of drywall installers (34%) and farm laborers (30%). They represent about one-quarter of roofers (27%), maids (25%), painters (24%), masons (22%) and carpet and floor installers (22%). (See Appendix Table A6 for other detailed occupations with high shares of unauthorized immigrants.)

At the state level, there is much less diversity in broad occupation groups than in broad industry groups. In 39 of 43 states and in the District of Columbia, service occupations account for the largest number (and share) of unauthorized immigrants in the workforce. Construction and production occupations also have large shares across many states, but these groups tend to have fewer unauthorized immigrant workers than service occupations. (Appendix Table A3 shows the top three major occupation groups in terms of the number of unauthorized immigrants together with their share of unauthorized workers in the state.)

TABLE 2

### U.S.-born and Unauthorized Immigrant Workers, by Major Occupation, 2012

% of each status group's workers who are in each major occupation

| Major Occupation Group                         | U.S. born | Unauthorized immigrants |
|------------------------------------------------|-----------|-------------------------|
| Service                                        | 17        | <b>33</b>               |
| Construction and extraction                    | 5         | <b>15</b>               |
| Production, installation and repair            | 9         | <b>14</b>               |
| Transportation and material moving             | 6         | <b>8</b>                |
| Farming, fishing and forestry                  | <0.5      | <b>4</b>                |
| Sales, office and administrative support       | 26        | 13                      |
| Professional, management, business and finance | <b>36</b> | <b>13</b>               |
|                                                | 100       | 100                     |

Note: Based on civilian labor force with a reported occupation; **boldface** indicates overrepresentation of unauthorized immigrants compared with U.S. born. For more detailed information on major occupation groups, see Appendix Table A9.

Source: Pew Research Center estimates based on augmented 2012 American Community Survey data from Integrated Public Use Microdata Series (IPUMS).

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Again, the picture changes when we examine the occupation groups where unauthorized immigrants make up the largest share of workers in the group. In 34 states, the occupation group with the highest proportion of workers who are unauthorized immigrants is farming, fishing and forestry (i.e., agriculture). This occupation group's total workforce has the highest share consisting of unauthorized immigrants nationally (26%). But because agriculture employs less than 1 percent of the U.S. workforce, there are very few states where these agricultural occupations represent a significant share of the unauthorized immigrant workforce.

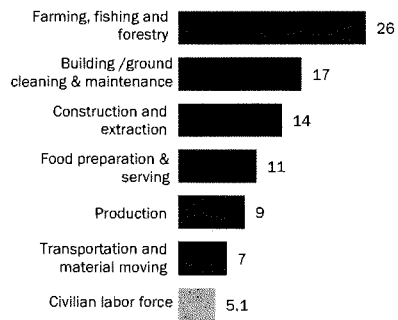
Construction jobs tend to have high shares of unauthorized immigrant workers. This occupation's workforce has the highest share of unauthorized immigrants in six states and the District of Columbia, the second highest in 24 and the third highest in another five.

Service occupations and production occupations tend to have relatively high shares of workers who are unauthorized immigrants, but at levels somewhat below agriculture and construction occupations. (Appendix Table A5 has the top three major occupation groups with the largest share of their workers who are unauthorized immigrants.)

FIGURE 5

### Occupations with High Shares of Unauthorized Immigrants, 2012

% unauthorized immigrants of workers in occupation



Source: Pew Research Center tabulations from augmented 2012 American Community Survey data from Integrated Public Use Microdata Series (IPUMS)

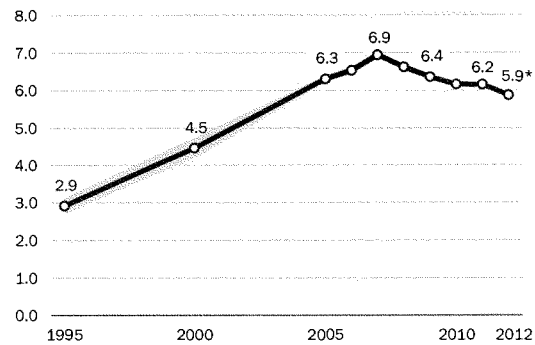
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## Appendix A. Additional Charts and Tables

FIGURE A1.

### Mexican Unauthorized Immigrant Population Declines Since 2007 Peak

*In millions*



Note: Shading surrounding line indicates high and low points of the estimated 90% confidence interval. Data labels are for 1995, 2000, 2005, 2007, 2009, 2011 and 2012. The symbol \* means the 2009-2012 change is statistically significant at 90% confidence interval.

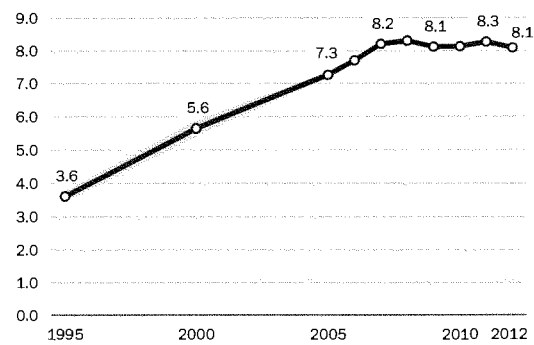
Source: Passel, Jeffrey S. and D'Vera Cohn, 2014. "Unauthorized Immigrant Totals Rise in 7 States, Fall in 14; Decline in Those From Mexico Fuels Most State Decreases." Washington, D.C. Pew Research Center's Hispanic Trends Project, November.

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FIGURE A2

### Unauthorized Immigrants in the U.S. Labor Force, 1995-2012

*In millions*

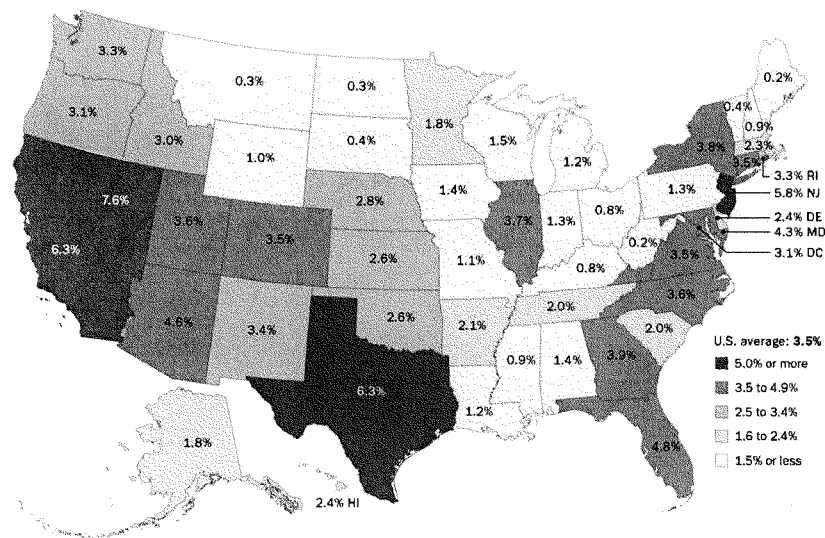


Note: Shading surrounding line indicates high and low points of the estimated 90% confidence interval. Data labels are for 1995, 2000, 2005, 2007, 2009, 2011 and 2012. The 2009-2012 change is not statistically significant at 90% confidence interval.

Source: Passel, Jeffrey S. and D'Vera Cohn, 2014. "Unauthorized Immigrant Totals Rise in 7 States, Fall in 14: Decline in Those From Mexico Fuels Most State Decreases." Washington, D.C. Pew Research Center's Hispanic Trends Project, November.

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MAP A1

**Unauthorized Immigrant Share of Population, by State, 2012**

Note: Percentages calculated from unrounded numbers.

Source: Pew Research Center estimates for 2012 based on augmented American Community Survey data from Integrated Public Use Microdata Series (IPUMS)



TABLE A1

**Estimates of Unauthorized Immigrants in the Total Population, Labor Force and Foreign-Born Population, by State, 2012***In thousands (unless otherwise specified)*

|                      | Population |                                                                 |     | Labor Force |                                                            |     | Foreign Born |                                |                                                 |
|----------------------|------------|-----------------------------------------------------------------|-----|-------------|------------------------------------------------------------|-----|--------------|--------------------------------|-------------------------------------------------|
|                      | Total      | Unauthorized<br>Immigrants<br>% of Total<br>Estimate Population |     | Total       | Unauthorized<br>Immigrants<br>% of Labor<br>Estimate Force |     | Total        | % Foreign-<br>born of<br>State | % Unauthorized<br>of Foreign-born<br>Population |
| Total U.S.           | 315,920    | 11,200                                                          | 3.5 | 158,980     | 8,100                                                      | 5.1 | 42,500       | 13.5                           | 26                                              |
| Alabama              | 4,840      | 65                                                              | 1.4 | 2,240       | 45                                                         | 2.0 | 170          | 3.6                            | 38                                              |
| Alaska               | 730        | 15                                                              | 1.8 | 380         | 10                                                         | 2.4 | 50           | 7.0                            | 25                                              |
| Arizona              | 6,590      | 300                                                             | 4.6 | 3,070       | 180                                                        | 6.0 | 925          | 13.9                           | 33                                              |
| Arkansas             | 2,960      | 60                                                              | 2.1 | 1,380       | 45                                                         | 3.2 | 140          | 4.7                            | 45                                              |
| California           | 38,340     | 2,450                                                           | 6.3 | 19,090      | 1,800                                                      | 9.4 | 10,500       | 27.5                           | 23                                              |
| Colorado             | 5,220      | 180                                                             | 3.5 | 2,800       | 130                                                        | 4.7 | 525          | 10.3                           | 34                                              |
| Connecticut          | 3,610      | 130                                                             | 3.5 | 1,970       | 100                                                        | 5.1 | 500          | 14.1                           | 25                                              |
| Delaware             | 920        | 20                                                              | 2.4 | 470         | 20                                                         | 3.8 | 85           | 9.1                            | 26                                              |
| District of Columbia | 640        | 20                                                              | 3.1 | 370         | 15                                                         | 4.1 | 100          | 15.4                           | 20                                              |
| Florida              | 19,480     | 925                                                             | 4.8 | 9,460       | 650                                                        | 6.9 | 3,900        | 20.0                           | 24                                              |
| Georgia              | 9,980      | 400                                                             | 3.9 | 4,810       | 275                                                        | 5.6 | 1,000        | 10.0                           | 39                                              |
| Hawaii               | 1,400      | 35                                                              | 2.4 | 700         | 25                                                         | 3.7 | 250          | 18.4                           | 13                                              |
| Idaho                | 1,610      | 50                                                              | 3.0 | 780         | 35                                                         | 4.6 | 110          | 6.9                            | 43                                              |
| Illinois             | 12,890     | 475                                                             | 3.7 | 6,720       | 350                                                        | 5.2 | 1,800        | 13.9                           | 26                                              |
| Indiana              | 6,560      | 85                                                              | 1.3 | 3,300       | 60                                                         | 1.9 | 325          | 4.9                            | 27                                              |
| Iowa                 | 3,090      | 40                                                              | 1.4 | 1,650       | 30                                                         | 2.0 | 140          | 4.6                            | 30                                              |
| Kansas               | 2,890      | 75                                                              | 2.6 | 1,490       | 50                                                         | 3.5 | 190          | 6.7                            | 38                                              |
| Kentucky             | 4,390      | 35                                                              | 0.8 | 2,070       | 25                                                         | 1.2 | 140          | 3.2                            | 26                                              |
| Louisiana            | 4,610      | 55                                                              | 1.2 | 2,200       | 40                                                         | 1.8 | 170          | 3.8                            | 31                                              |
| Maine                | 1,330      | <5                                                              | 0.2 | 700         | <5                                                         | 0.3 | 45           | 3.5                            | 6                                               |
| Maryland             | 5,940      | 250                                                             | 4.3 | 3,260       | 200                                                        | 6.2 | 875          | 14.8                           | 29                                              |
| Massachusetts        | 6,700      | 150                                                             | 2.3 | 3,680       | 120                                                        | 3.4 | 1,050        | 15.8                           | 15                                              |
| Michigan             | 9,950      | 120                                                             | 1.2 | 4,860       | 75                                                         | 1.6 | 675          | 6.7                            | 18                                              |
| Minnesota            | 5,410      | 95                                                              | 1.8 | 3,000       | 75                                                         | 2.5 | 425          | 7.9                            | 22                                              |
| Mississippi          | 2,990      | 25                                                              | 0.9 | 1,350       | 15                                                         | 1.2 | 60           | 2.0                            | 44                                              |

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TABLE A1 (continued)

**Estimates of Unauthorized Immigrants in the Total Population, Labor Force and Foreign-Born Population, by State, 2012***In thousands (unless otherwise specified)*

|                | Population |                            |                          | Labor Force |                            |                     | Foreign Born |                                |                                                 |
|----------------|------------|----------------------------|--------------------------|-------------|----------------------------|---------------------|--------------|--------------------------------|-------------------------------------------------|
|                | Total      | Unauthorized<br>Immigrants | % of Total<br>Population | Total       | Unauthorized<br>Immigrants | % of Labor<br>Force | Total        | % Foreign-<br>born of<br>State | % Unauthorized<br>of Foreign-born<br>Population |
| Missouri       | 6,040      | 65                         | 1.1                      | 3,020       | 45                         | 1.4                 | 240          | 4.0                            | 27                                              |
| Montana        | 1,010      | <5                         | 0.3                      | 520         | <5                         | 0.4                 | 20           | 1.9                            | 14                                              |
| Nebraska       | 1,860      | 55                         | 2.8                      | 1,020       | 40                         | 3.7                 | 130          | 6.9                            | 41                                              |
| Nevada         | 2,780      | 210                        | 7.6                      | 1,420       | 150                        | 10.2                | 550          | 19.7                           | 39                                              |
| New Hampshire  | 1,330      | 10                         | 0.9                      | 740         | 10                         | 1.2                 | 80           | 6.0                            | 15                                              |
| New Jersey     | 9,010      | 525                        | 5.8                      | 4,770       | 400                        | 8.2                 | 2,000        | 22.3                           | 26                                              |
| New Mexico     | 2,100      | 70                         | 3.4                      | 980         | 45                         | 4.7                 | 200          | 9.7                            | 35                                              |
| New York       | 19,680     | 750                        | 3.8                      | 10,120      | 575                        | 5.7                 | 4,550        | 23.1                           | 16                                              |
| North Carolina | 9,810      | 350                        | 3.6                      | 4,820       | 250                        | 5.2                 | 800          | 8.2                            | 44                                              |
| North Dakota   | 700        | <5                         | 0.3                      | 390         | <5                         | 0.5                 | 20           | 3.0                            | 10                                              |
| Ohio           | 11,580     | 95                         | 0.8                      | 5,820       | 65                         | 1.1                 | 475          | 4.1                            | 20                                              |
| Oklahoma       | 3,830      | 100                        | 2.6                      | 1,830       | 65                         | 3.7                 | 230          | 5.9                            | 43                                              |
| Oregon         | 3,920      | 120                        | 3.1                      | 1,960       | 90                         | 4.6                 | 400          | 10.0                           | 31                                              |
| Pennsylvania   | 12,810     | 170                        | 1.3                      | 6,550       | 110                        | 1.7                 | 800          | 6.3                            | 21                                              |
| Rhode Island   | 1,060      | 35                         | 3.3                      | 570         | 25                         | 4.6                 | 150          | 13.9                           | 23                                              |
| South Carolina | 4,740      | 95                         | 2.0                      | 2,280       | 70                         | 3.0                 | 240          | 5.0                            | 41                                              |
| South Dakota   | 830        | <5                         | 0.4                      | 450         | <5                         | 0.6                 | 25           | 2.8                            | 14                                              |
| Tennessee      | 6,500      | 130                        | 2.0                      | 3,140       | 90                         | 2.8                 | 325          | 5.0                            | 40                                              |
| Texas          | 26,390     | 1,650                      | 6.3                      | 12,960      | 1,150                      | 8.9                 | 4,500        | 17.1                           | 37                                              |
| Utah           | 2,870      | 100                        | 3.6                      | 1,420       | 70                         | 5.1                 | 250          | 8.8                            | 41                                              |
| Vermont        | 630        | <5                         | 0.4                      | 350         | <5                         | 0.5                 | 25           | 4.3                            | 9                                               |
| Virginia       | 8,250      | 275                        | 3.5                      | 4,280       | 220                        | 5.1                 | 1,000        | 12.2                           | 28                                              |
| Washington     | 6,950      | 230                        | 3.3                      | 3,540       | 170                        | 4.9                 | 975          | 13.9                           | 24                                              |
| West Virginia  | 1,860      | <5                         | 0.2                      | 820         | <5                         | 0.2                 | 30           | 1.5                            | 13                                              |
| Wisconsin      | 5,740      | 85                         | 1.5                      | 3,070       | 55                         | 1.8                 | 275          | 4.9                            | 30                                              |
| Wyoming        | 580        | 5                          | 1.0                      | 310         | <5                         | 1.3                 | 20           | 3.1                            | 31                                              |

Note: All numbers are rounded independently and are not adjusted to sum to the total U.S. figure or other totals. Percentages calculated from unrounded numbers. See Methodology for rounding rules.

Source: Pew Research Center estimates based on augmented 2012 American Community Survey data from Integrated Public Use Microdata Series (IPUMS)

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TABLE A2

**Top Industries for Unauthorized Immigrants, by State, 2012***Rankings based on industries with the highest share among the total unauthorized immigrant labor force*

|                      | #1 Largest Industry   |                                         | #2 Largest Industry |                                         | #3 Largest Industry   |                                         |
|----------------------|-----------------------|-----------------------------------------|---------------------|-----------------------------------------|-----------------------|-----------------------------------------|
|                      | Industry              | % of Unauthorized Immigrant Labor Force | Industry            | % of Unauthorized Immigrant Labor Force | Industry              | % of Unauthorized Immigrant Labor Force |
| Total U.S.           | Leisure/hospitality   | 18                                      | Construction        | 16                                      | Business services     | 14                                      |
| Alabama              | Construction          | 30                                      | Leisure/hospitality | 20                                      | Business services     | 14                                      |
| Alaska               | Educ./health services | 33                                      | Leisure/hospitality | 25                                      | Manufacturing         | 24                                      |
| Arizona              | Leisure/hospitality   | 18                                      | Business services   | 17                                      | Construction          | 15                                      |
| Arkansas             | Manufacturing         | 33                                      | Leisure/hospitality | 18                                      | Construction          | 15                                      |
| California           | Leisure/hospitality   | 16                                      | Manufacturing       | 15                                      | Business services     | 13                                      |
| Colorado             | Leisure/hospitality   | 22                                      | Construction        | 21                                      | Business services     | 17                                      |
| Connecticut          | Leisure/hospitality   | 17                                      | Business services   | 16                                      | Educ./health services | 13                                      |
| Delaware             | Business services     | 30                                      | Leisure/hospitality | 17                                      | Manufacturing         | 12                                      |
| District of Columbia | Leisure/hospitality   | 23                                      | Business services   | 21                                      | Educ./health services | 17                                      |
| Florida              | Leisure/hospitality   | 18                                      | Wholesale/retail    | 17                                      | Business services     | 14                                      |
| Georgia              | Construction          | 21                                      | Manufacturing       | 16                                      | Business services     | 15                                      |
| Hawaii               | Leisure/hospitality   | 28                                      | Business services   | 19                                      | Wholesale/retail      | 14                                      |
| Idaho                | Agriculture           | 31                                      | Leisure/hospitality | 20                                      | Manufacturing         | 11                                      |
| Illinois             | Manufacturing         | 25                                      | Leisure/hospitality | 19                                      | Business services     | 16                                      |
| Indiana              | Manufacturing         | 28                                      | Leisure/hospitality | 24                                      | Construction          | 12                                      |
| Iowa                 | Manufacturing         | 33                                      | Leisure/hospitality | 14                                      | Construction          | 14                                      |
| Kansas               | Manufacturing         | 25                                      | Leisure/hospitality | 18                                      | Construction          | 13                                      |
| Kentucky             | Leisure/hospitality   | 24                                      | Manufacturing       | 17                                      | Construction          | 17                                      |
| Louisiana            | Construction          | 34                                      | Leisure/hospitality | 17                                      | Business services     | 9                                       |
| Maine                | *                     | *                                       | *                   | *                                       | *                     | *                                       |
| Maryland             | Construction          | 23                                      | Business services   | 20                                      | Leisure/hospitality   | 15                                      |
| Massachusetts        | Educ./health services | 18                                      | Business services   | 17                                      | Wholesale/retail      | 14                                      |
| Michigan             | Manufacturing         | 21                                      | Business services   | 17                                      | Leisure/hospitality   | 15                                      |
| Minnesota            | Leisure/hospitality   | 22                                      | Manufacturing       | 21                                      | Business services     | 19                                      |

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TABLE A2 (continued)

**Top Industries for Unauthorized Immigrants, by State, 2012***Rankings based on industries with the highest share among the total unauthorized immigrant labor force*

|                | #1 Largest Industry |                                         | #2 Largest Industry |                                         | #3 Largest Industry   |                                         |
|----------------|---------------------|-----------------------------------------|---------------------|-----------------------------------------|-----------------------|-----------------------------------------|
|                | Industry            | % of Unauthorized Immigrant Labor Force | Industry            | % of Unauthorized Immigrant Labor Force | Industry              | % of Unauthorized Immigrant Labor Force |
| Mississippi    | Manufacturing       | 33                                      | Leisure/hospitality | 20                                      | Wholesale/retail      | 15                                      |
| Missouri       | Business services   | 23                                      | Leisure/hospitality | 19                                      | Manufacturing         | 14                                      |
| Montana        | *                   | *                                       | *                   | *                                       | *                     | *                                       |
| Nebraska       | Manufacturing       | 29                                      | Leisure/hospitality | 23                                      | Construction          | 18                                      |
| Nevada         | Leisure/hospitality | 39                                      | Business services   | 14                                      | Construction          | 14                                      |
| New Hampshire  | Leisure/hospitality | 29                                      | Business services   | 29                                      | Wholesale/retail      | 10                                      |
| New Jersey     | Leisure/hospitality | 17                                      | Business services   | 15                                      | Wholesale/retail      | 14                                      |
| New Mexico     | Construction        | 22                                      | Leisure/hospitality | 21                                      | Educ./health services | 10                                      |
| New York       | Leisure/hospitality | 20                                      | Construction        | 16                                      | Wholesale/retail      | 15                                      |
| North Carolina | Construction        | 23                                      | Leisure/hospitality | 19                                      | Manufacturing         | 16                                      |
| North Dakota   | *                   | *                                       | *                   | *                                       | *                     | *                                       |
| Ohio           | Business services   | 19                                      | Manufacturing       | 19                                      | Leisure/hospitality   | 18                                      |
| Oklahoma       | Construction        | 28                                      | Leisure/hospitality | 22                                      | Business services     | 12                                      |
| Oregon         | Leisure/hospitality | 16                                      | Manufacturing       | 16                                      | Agriculture           | 16                                      |
| Pennsylvania   | Manufacturing       | 16                                      | Leisure/hospitality | 15                                      | Business services     | 13                                      |
| Rhode Island   | Manufacturing       | 27                                      | Business services   | 23                                      | Leisure/hospitality   | 18                                      |
| South Carolina | Construction        | 23                                      | Leisure/hospitality | 21                                      | Business services     | 16                                      |
| South Dakota   | *                   | *                                       | *                   | *                                       | *                     | *                                       |
| Tennessee      | Construction        | 33                                      | Leisure/hospitality | 21                                      | Business services     | 13                                      |
| Texas          | Construction        | 24                                      | Leisure/hospitality | 16                                      | Business services     | 13                                      |
| Utah           | Leisure/hospitality | 23                                      | Construction        | 18                                      | Manufacturing         | 14                                      |
| Vermont        | *                   | *                                       | *                   | *                                       | *                     | *                                       |
| Virginia       | Construction        | 23                                      | Leisure/hospitality | 17                                      | Business services     | 17                                      |
| Washington     | Agriculture         | 22                                      | Leisure/hospitality | 17                                      | Business services     | 16                                      |
| West Virginia  | *                   | *                                       | *                   | *                                       | *                     | *                                       |
| Wisconsin      | Manufacturing       | 30                                      | Leisure/hospitality | 19                                      | Wholesale/retail      | 12                                      |
| Wyoming        | *                   | *                                       | *                   | *                                       | *                     | *                                       |

Note: Data shown only for states with at least 5,000 unauthorized immigrants in the labor force. Percentages calculated from unrounded numbers. Rankings based on unrounded percentages. The industry groups shown correspond to the Census Bureau classifications for Major Industry Groups. The names have been shortened for display purposes. See the methodology appendix for the full Census Bureau classifications.

Source: Pew Research Center estimates based on augmented 2012 American Community Survey data from Integrated Public Use Microdata Series (IPUMS)

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TABLE A3

**Top Occupations for Unauthorized Immigrants, by State, 2012***Rankings based on occupations with the highest share among the total unauthorized immigrant labor force*

|                      | #1 Largest Occupation |                                         | #2 Largest Occupation |                                         | #3 Largest Occupation |                                         |
|----------------------|-----------------------|-----------------------------------------|-----------------------|-----------------------------------------|-----------------------|-----------------------------------------|
|                      | Occupation            | % of Unauthorized Immigrant Labor Force | Occupation            | % of Unauthorized Immigrant Labor Force | Occupation            | % of Unauthorized Immigrant Labor Force |
| Total U.S.           | Service               | 33                                      | Construction          | 15                                      | Production            | 11                                      |
| Alabama              | Service               | 35                                      | Construction          | 31                                      | Sales                 | 7                                       |
| Alaska               | Service               | 51                                      | Production            | 20                                      | Maintenance           | 13                                      |
| Arizona              | Service               | 38                                      | Construction          | 15                                      | Production            | 8                                       |
| Arkansas             | Service               | 29                                      | Production            | 26                                      | Construction          | 14                                      |
| California           | Service               | 29                                      | Production            | 12                                      | Construction          | 11                                      |
| Colorado             | Service               | 37                                      | Construction          | 20                                      | Transportation        | 7                                       |
| Connecticut          | Service               | 42                                      | Construction          | 12                                      | Professional          | 9                                       |
| Delaware             | Service               | 44                                      | Construction          | 13                                      | Transportation        | 10                                      |
| District of Columbia | Service               | 46                                      | Construction          | 17                                      | Management            | 12                                      |
| Florida              | Service               | 34                                      | Construction          | 13                                      | Sales                 | 13                                      |
| Georgia              | Service               | 31                                      | Construction          | 20                                      | Production            | 13                                      |
| Hawaii               | Service               | 45                                      | Transportation        | 12                                      | Office support        | 10                                      |
| Idaho                | Farming               | 33                                      | Service               | 26                                      | Production            | 11                                      |
| Illinois             | Service               | 32                                      | Production            | 22                                      | Transportation        | 9                                       |
| Indiana              | Service               | 32                                      | Production            | 20                                      | Transportation        | 16                                      |
| Iowa                 | Production            | 25                                      | Service               | 22                                      | Construction          | 13                                      |
| Kansas               | Service               | 31                                      | Construction          | 15                                      | Production            | 15                                      |
| Kentucky             | Service               | 32                                      | Construction          | 16                                      | Production            | 13                                      |
| Louisiana            | Construction          | 36                                      | Service               | 29                                      | Professional          | 8                                       |
| Maine                | *                     | *                                       | *                     | *                                       | *                     | *                                       |
| Maryland             | Service               | 38                                      | Construction          | 21                                      | Professional          | 9                                       |
| Massachusetts        | Service               | 29                                      | Professional          | 22                                      | Construction          | 10                                      |
| Michigan             | Service               | 27                                      | Professional          | 20                                      | Production            | 13                                      |
| Minnesota            | Service               | 37                                      | Production            | 15                                      | Professional          | 12                                      |
| Mississippi          | Service               | 27                                      | Construction          | 23                                      | Production            | 15                                      |

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TABLE A3 (continued)

**Top Occupations for Unauthorized Immigrants, by State, 2012***Rankings based on occupations with the highest share among the total unauthorized immigrant labor force*

|                | #1 Largest Occupation |                                                  | #2 Largest Occupation |                                                  | #3 Largest Occupation |                                                  |
|----------------|-----------------------|--------------------------------------------------|-----------------------|--------------------------------------------------|-----------------------|--------------------------------------------------|
|                | Occupation            | % of<br>Unauthorized<br>Immigrant Labor<br>Force | Occupation            | % of<br>Unauthorized<br>Immigrant Labor<br>Force | Occupation            | % of<br>Unauthorized<br>Immigrant Labor<br>Force |
| Missouri       | Service               | 39                                               | Professional          | 13                                               | Production            | 11                                               |
| Montana        | *                     | *                                                | *                     | *                                                | *                     | *                                                |
| Nebraska       | Service               | 39                                               | Production            | 21                                               | Construction          | 19                                               |
| Nevada         | Service               | 47                                               | Construction          | 14                                               | Transportation        | 8                                                |
| New Hampshire  | Service               | 31                                               | Professional          | 25                                               | Management            | 20                                               |
| New Jersey     | Service               | 30                                               | Construction          | 12                                               | Professional          | 12                                               |
| New Mexico     | Service               | 42                                               | Construction          | 22                                               | Sales                 | 7                                                |
| New York       | Service               | 38                                               | Construction          | 15                                               | Transportation        | 9                                                |
| North Carolina | Service               | 31                                               | Construction          | 23                                               | Production            | 13                                               |
| North Dakota   | *                     | *                                                | *                     | *                                                | *                     | *                                                |
| Ohio           | Service               | 30                                               | Production            | 14                                               | Professional          | 10                                               |
| Oklahoma       | Service               | 32                                               | Construction          | 28                                               | Production            | 14                                               |
| Oregon         | Service               | 37                                               | Farming               | 16                                               | Transportation        | 9                                                |
| Pennsylvania   | Service               | 29                                               | Professional          | 13                                               | Production            | 11                                               |
| Rhode Island   | Service               | 40                                               | Production            | 25                                               | Professional          | 7                                                |
| South Carolina | Service               | 32                                               | Construction          | 23                                               | Production            | 12                                               |
| South Dakota   | *                     | *                                                | *                     | *                                                | *                     | *                                                |
| Tennessee      | Construction          | 31                                               | Service               | 29                                               | Production            | 11                                               |
| Texas          | Service               | 33                                               | Construction          | 23                                               | Production            | 12                                               |
| Utah           | Service               | 34                                               | Construction          | 20                                               | Production            | 15                                               |
| Vermont        | *                     | *                                                | *                     | *                                                | *                     | *                                                |
| Virginia       | Service               | 33                                               | Construction          | 21                                               | Sales                 | 8                                                |
| Washington     | Service               | 28                                               | Farming               | 19                                               | Construction          | 11                                               |
| West Virginia  | *                     | *                                                | *                     | *                                                | *                     | *                                                |
| Wisconsin      | Service               | 29                                               | Production            | 22                                               | Professional          | 9                                                |
| Wyoming        | *                     | *                                                | *                     | *                                                | *                     | *                                                |

Note: Data shown only for states with at least 5,000 unauthorized immigrants in the labor force. Percentages calculated from unrounded numbers. Rankings based on unrounded percentages. The occupation groups shown correspond to the Census Bureau classifications for Major Occupation Groups. The names have been shortened for display purposes. See the methodology appendix for the full Census Bureau classifications.

Source: Pew Research Center estimates based on augmented 2012 American Community Survey data from Integrated Public Use Microdata Series (IPUMS)

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TABLE A4

**Industries with Highest Shares of Unauthorized Immigrant Workers, by State, 2012**

|                      | #1 Largest Industry |                                                          | #2 Largest Industry |                                                          | #3 Largest Industry   |                                                          |
|----------------------|---------------------|----------------------------------------------------------|---------------------|----------------------------------------------------------|-----------------------|----------------------------------------------------------|
|                      | Industry            | % of Workers in Industry who are Unauthorized Immigrants | Industry            | % of Workers in Industry who are Unauthorized Immigrants | Industry              | % of Workers in Industry who are Unauthorized Immigrants |
| Total U.S.           | Agriculture         | 16                                                       | Construction        | 12                                                       | Leisure/hospitality   | 9                                                        |
| Alabama              | Construction        | 9                                                        | Agriculture         | 5                                                        | Leisure/hospitality   | 4                                                        |
| Alaska               | Manufacturing       | 16                                                       | Leisure/hospitality | 7                                                        | Educ./health services | 3                                                        |
| Arizona              | Agriculture         | 29                                                       | Construction        | 14                                                       | Other services        | 11                                                       |
| Arkansas             | Manufacturing       | 8                                                        | Information         | 7                                                        | Construction          | 7                                                        |
| California           | Agriculture         | 29                                                       | Construction        | 18                                                       | Other services        | 15                                                       |
| Colorado             | Agriculture         | 14                                                       | Construction        | 13                                                       | Leisure/hospitality   | 9                                                        |
| Connecticut          | Agriculture         | 20                                                       | Other services      | 13                                                       | Construction          | 11                                                       |
| Delaware             | Business services   | 11                                                       | Construction        | 7                                                        | Leisure/hospitality   | 7                                                        |
| District of Columbia | Construction        | 23                                                       | Leisure/hospitality | 9                                                        | Financial activities  | 5                                                        |
| Florida              | Agriculture         | 19                                                       | Construction        | 14                                                       | Other services        | 13                                                       |
| Georgia              | Construction        | 18                                                       | Agriculture         | 14                                                       | Other services        | 9                                                        |
| Hawaii               | Agriculture         | 15                                                       | Transport/utilities | 7                                                        | Leisure/hospitality   | 6                                                        |
| Idaho                | Agriculture         | 25                                                       | Leisure/hospitality | 9                                                        | Construction          | 6                                                        |
| Illinois             | Leisure/hospitality | 11                                                       | Manufacturing       | 10                                                       | Construction          | 9                                                        |
| Indiana              | Leisure/hospitality | 5                                                        | Construction        | 4                                                        | Manufacturing         | 3                                                        |
| Iowa                 | Manufacturing       | 4                                                        | Construction        | 4                                                        | Leisure/hospitality   | 4                                                        |
| Kansas               | Mining              | 11                                                       | Information         | 7                                                        | Construction          | 7                                                        |
| Kentucky             | Agriculture         | 9                                                        | Construction        | 3                                                        | Leisure/hospitality   | 3                                                        |
| Louisiana            | Construction        | 8                                                        | Agriculture         | 3                                                        | Leisure/hospitality   | 3                                                        |
| Maine                | *                   | *                                                        | *                   | *                                                        | *                     | *                                                        |
| Maryland             | Construction        | 20                                                       | Agriculture         | 13                                                       | Leisure/hospitality   | 11                                                       |
| Massachusetts        | Agriculture         | 7                                                        | Construction        | 6                                                        | Leisure/hospitality   | 5                                                        |
| Michigan             | Agriculture         | 9                                                        | Business services   | 3                                                        | Leisure/hospitality   | 2                                                        |
| Minnesota            | Leisure/hospitality | 6                                                        | Agriculture         | 6                                                        | Business services     | 5                                                        |
| Mississippi          | Information         | 5                                                        | Manufacturing       | 3                                                        | Construction          | 2                                                        |

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TABLE A4 (continued)

**Industries with Highest Shares of Unauthorized Immigrant Workers, by State, 2012**

|                | #1 Largest Industry |                                                                      | #2 Largest Industry |                                                                      | #3 Largest Industry |                                                                      |
|----------------|---------------------|----------------------------------------------------------------------|---------------------|----------------------------------------------------------------------|---------------------|----------------------------------------------------------------------|
|                | Industry            | % of Workers<br>in Industry<br>who are<br>Unauthorized<br>Immigrants | Industry            | % of Workers<br>in Industry<br>who are<br>Unauthorized<br>Immigrants | Industry            | % of Workers<br>in Industry<br>who are<br>Unauthorized<br>Immigrants |
| Missouri       | Business services   | 3                                                                    | Agriculture         | 3                                                                    | Leisure/hospitality | 3                                                                    |
| Montana        | *                   | *                                                                    | *                   | *                                                                    | *                   | *                                                                    |
| Nebraska       | Construction        | 10                                                                   | Manufacturing       | 9                                                                    | Leisure/hospitality | 9                                                                    |
| Nevada         | Construction        | 21                                                                   | Agriculture         | 17                                                                   | Leisure/hospitality | 15                                                                   |
| New Hampshire  | Leisure/hospitality | 4                                                                    | Business services   | 3                                                                    | Construction        | 1                                                                    |
| New Jersey     | Agriculture         | 31                                                                   | Construction        | 17                                                                   | Leisure/hospitality | 15                                                                   |
| New Mexico     | Agriculture         | 14                                                                   | Construction        | 14                                                                   | Other services      | 9                                                                    |
| New York       | Construction        | 15                                                                   | Other services      | 13                                                                   | Leisure/hospitality | 11                                                                   |
| North Carolina | Agriculture         | 22                                                                   | Construction        | 17                                                                   | Leisure/hospitality | 10                                                                   |
| North Dakota   | *                   | *                                                                    | *                   | *                                                                    | *                   | *                                                                    |
| Ohio           | Agriculture         | 5                                                                    | Business services   | 2                                                                    | Leisure/hospitality | 2                                                                    |
| Oklahoma       | Construction        | 14                                                                   | Agriculture         | 9                                                                    | Leisure/hospitality | 8                                                                    |
| Oregon         | Agriculture         | 24                                                                   | Leisure/hospitality | 8                                                                    | Construction        | 7                                                                    |
| Pennsylvania   | Agriculture         | 14                                                                   | Leisure/hospitality | 3                                                                    | Other services      | 3                                                                    |
| Rhode Island   | Business services   | 11                                                                   | Manufacturing       | 10                                                                   | Leisure/hospitality | 8                                                                    |
| South Carolina | Agriculture         | 15                                                                   | Construction        | 11                                                                   | Leisure/hospitality | 6                                                                    |
| South Dakota   | *                   | *                                                                    | *                   | *                                                                    | *                   | *                                                                    |
| Tennessee      | Construction        | 13                                                                   | Agriculture         | 8                                                                    | Leisure/hospitality | 6                                                                    |
| Texas          | Construction        | 25                                                                   | Agriculture         | 21                                                                   | Leisure/hospitality | 15                                                                   |
| Utah           | Agriculture         | 13                                                                   | Construction        | 13                                                                   | Leisure/hospitality | 12                                                                   |
| Vermont        | *                   | *                                                                    | *                   | *                                                                    | *                   | *                                                                    |
| Virginia       | Agriculture         | 18                                                                   | Construction        | 16                                                                   | Leisure/hospitality | 9                                                                    |
| Washington     | Agriculture         | 35                                                                   | Leisure/hospitality | 9                                                                    | Construction        | 8                                                                    |
| West Virginia  | *                   | *                                                                    | *                   | *                                                                    | *                   | *                                                                    |
| Wisconsin      | Agriculture         | 8                                                                    | Leisure/hospitality | 4                                                                    | Other services      | 3                                                                    |
| Wyoming        | *                   | *                                                                    | *                   | *                                                                    | *                   | *                                                                    |

Note: Data shown only for states with at least 5,000 unauthorized immigrants in the labor force. Percentages calculated from unrounded numbers. Rankings based on unrounded percentages. The industry groups shown correspond to the Census Bureau classifications for Major Industry Groups. The names have been shortened for display purposes. See the methodology appendix for the full Census Bureau classifications.

Source: Pew Research Center estimates based on augmented 2012 American Community Survey data from Integrated Public Use Microdata Series (IPUMS)

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TABLE A5

**Occupations with Highest Shares of Unauthorized Immigrant Workers, by State, 2012**

|                      | #1 Largest Occupation |                                                            | #2 Largest Occupation |                                                            | #3 Largest Occupation |                                                            |
|----------------------|-----------------------|------------------------------------------------------------|-----------------------|------------------------------------------------------------|-----------------------|------------------------------------------------------------|
|                      | Occupation            | % of Workers in Occupation who are Unauthorized Immigrants | Occupation            | % of Workers in Occupation who are Unauthorized Immigrants | Occupation            | % of Workers in Occupation who are Unauthorized Immigrants |
| Total U.S.           | Farming               | 26                                                         | Construction          | 14                                                         | Production            | 9                                                          |
| Alabama              | Construction          | 11                                                         | Farming               | 9                                                          | Service               | 4                                                          |
| Alaska               | Production            | 11                                                         | Maintenance           | 6                                                          | Service               | 6                                                          |
| Arizona              | Farming               | 38                                                         | Construction          | 17                                                         | Production            | 12                                                         |
| Arkansas             | Farming               | 14                                                         | Production            | 9                                                          | Construction          | 7                                                          |
| California           | Farming               | 34                                                         | Production            | 22                                                         | Construction          | 21                                                         |
| Colorado             | Farming               | 32                                                         | Construction          | 15                                                         | Service               | 10                                                         |
| Connecticut          | Farming               | 26                                                         | Construction          | 14                                                         | Service               | 11                                                         |
| Delaware             | Farming               | 33                                                         | Construction          | 10                                                         | Service               | 8                                                          |
| District of Columbia | Construction          | 27                                                         | Service               | 12                                                         | Maintenance           | 11                                                         |
| Florida              | Farming               | 25                                                         | Construction          | 16                                                         | Service               | 11                                                         |
| Georgia              | Farming               | 23                                                         | Construction          | 21                                                         | Production            | 11                                                         |
| Hawaii               | Farming               | 21                                                         | Service               | 7                                                          | Transportation        | 7                                                          |
| Idaho                | Farming               | 43                                                         | Production            | 8                                                          | Construction          | 7                                                          |
| Illinois             | Production            | 16                                                         | Construction          | 10                                                         | Service               | 9                                                          |
| Indiana              | Farming               | 7                                                          | Construction          | 4                                                          | Transportation        | 4                                                          |
| Iowa                 | Farming               | 9                                                          | Production            | 6                                                          | Construction          | 5                                                          |
| Kansas               | Farming               | 13                                                         | Construction          | 9                                                          | Production            | 7                                                          |
| Kentucky             | Farming               | 17                                                         | Construction          | 3                                                          | Service               | 2                                                          |
| Louisiana            | Construction          | 8                                                          | Farming               | 6                                                          | Service               | 3                                                          |
| Maine                | *                     | *                                                          | *                     | *                                                          | *                     | *                                                          |
| Maryland             | Farming               | 28                                                         | Construction          | 26                                                         | Service               | 13                                                         |
| Massachusetts        | Construction          | 7                                                          | Production            | 6                                                          | Farming               | 6                                                          |
| Michigan             | Farming               | 15                                                         | Production            | 2                                                          | Service               | 2                                                          |
| Minnesota            | Farming               | 17                                                         | Service               | 5                                                          | Production            | 5                                                          |
| Mississippi          | Construction          | 4                                                          | Farming               | 4                                                          | Production            | 2                                                          |

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TABLE A5 (continued)

**Occupations with Highest Shares of Unauthorized Immigrant Workers, by State, 2012**

|                | #1 Largest Occupation |                                                            | #2 Largest Occupation |                                                            | #3 Largest Occupation |                                                            |
|----------------|-----------------------|------------------------------------------------------------|-----------------------|------------------------------------------------------------|-----------------------|------------------------------------------------------------|
|                | Occupation            | % of Workers in Occupation who are Unauthorized Immigrants | Occupation            | % of Workers in Occupation who are Unauthorized Immigrants | Occupation            | % of Workers in Occupation who are Unauthorized Immigrants |
| Missouri       | Farming               | 6                                                          | Service               | 3                                                          | Production            | 2                                                          |
| Montana        | *                     | *                                                          | *                     | *                                                          | *                     | *                                                          |
| Nebraska       | Construction          | 14                                                         | Production            | 10                                                         | Farming               | 10                                                         |
| Nevada         | Farming               | 32                                                         | Construction          | 25                                                         | Production            | 18                                                         |
| New Hampshire  | Service               | 2                                                          | Management            | 2                                                          | Professional          | 1                                                          |
| New Jersey     | Farming               | 44                                                         | Construction          | 20                                                         | Production            | 19                                                         |
| New Mexico     | Farming               | 24                                                         | Construction          | 14                                                         | Production            | 9                                                          |
| New York       | Construction          | 17                                                         | Farming               | 11                                                         | Service               | 10                                                         |
| North Carolina | Farming               | 34                                                         | Construction          | 21                                                         | Production            | 9                                                          |
| North Dakota   | *                     | *                                                          | *                     | *                                                          | *                     | *                                                          |
| Ohio           | Farming               | 14                                                         | Construction          | 2                                                          | Service               | 2                                                          |
| Oklahoma       | Farming               | 18                                                         | Construction          | 15                                                         | Production            | 7                                                          |
| Oregon         | Farming               | 37                                                         | Service               | 9                                                          | Construction          | 8                                                          |
| Pennsylvania   | Farming               | 23                                                         | Construction          | 3                                                          | Production            | 3                                                          |
| Rhode Island   | Farming               | 20                                                         | Production            | 16                                                         | Service               | 9                                                          |
| South Carolina | Farming               | 25                                                         | Construction          | 13                                                         | Service               | 5                                                          |
| South Dakota   | *                     | *                                                          | *                     | *                                                          | *                     | *                                                          |
| Tennessee      | Farming               | 17                                                         | Construction          | 16                                                         | Service               | 5                                                          |
| Texas          | Farming               | 33                                                         | Construction          | 28                                                         | Production            | 18                                                         |
| Utah           | Farming               | 31                                                         | Construction          | 17                                                         | Production            | 12                                                         |
| Vermont        | *                     | *                                                          | *                     | *                                                          | *                     | *                                                          |
| Virginia       | Farming               | 22                                                         | Construction          | 19                                                         | Service               | 10                                                         |
| Washington     | Farming               | 44                                                         | Construction          | 10                                                         | Production            | 7                                                          |
| West Virginia  | *                     | *                                                          | *                     | *                                                          | *                     | *                                                          |
| Wisconsin      | Farming               | 16                                                         | Production            | 4                                                          | Service               | 3                                                          |
| Wyoming        | *                     | *                                                          | *                     | *                                                          | *                     | *                                                          |

Note: Data shown only for states with at least 5,000 unauthorized immigrants in the labor force. Percentages calculated from unrounded numbers. Rankings based on unrounded percentages. The occupation groups shown correspond to the Census Bureau classifications for Major Occupation Groups. The names have been shortened for display purposes. See the methodology appendix for the full Census Bureau classifications.

Source: Pew Research Center estimates based on augmented 2012 American Community Survey data from Integrated Public Use Microdata Series (IPUMS)

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TABLE A6

**Detailed Occupations with Highest Shares of Unauthorized Immigrant Workers, 2012***In thousands (unless otherwise specified)*

| <b>Detailed Occupation</b>                                    | <b>Total</b>   | <b>Unauthorized Immigrants</b> |                  | <b>U.S.-born</b> | <b>Legal</b>               |
|---------------------------------------------------------------|----------------|--------------------------------|------------------|------------------|----------------------------|
|                                                               | <b>Workers</b> | <b>Workers</b>                 | <b>Share (%)</b> | <b>Share (%)</b> | <b>Immigrant Share (%)</b> |
| <b>Total, Civilian Labor Force (with an occupation)</b>       | <b>156,660</b> | <b>7,900</b>                   | <b>5</b>         | <b>83</b>        | <b>12</b>                  |
| Drywall Installers, Ceiling Tile Installers, and Tapers       | 150            | 50                             | 34               | 52               | 14                         |
| Miscellaneous Agricultural Workers                            | 910            | 275                            | 30               | 47               | 23                         |
| Roofers                                                       | 260            | 70                             | 27               | 60               | 13                         |
| Maids and housekeeping cleaners                               | 1,760          | 425                            | 25               | 50               | 25                         |
| Painters, Construction and Maintenance                        | 670            | 160                            | 24               | 61               | 15                         |
| Brickmasons, Blockmasons, and Stonemasons                     | 170            | 35                             | 22               | 64               | 14                         |
| Carpet, Floor, and Tile Installers and Finishers              | 180            | 40                             | 22               | 63               | 15                         |
| Grounds Maintenance Workers                                   | 1,580          | 350                            | 21               | 64               | 14                         |
| Sewing Machine Operators                                      | 220            | 45                             | 21               | 48               | 31                         |
| Packaging and Filling Machine Operators and Tenders           | 290            | 60                             | 21               | 59               | 20                         |
| Construction Laborers                                         | 1,930          | 400                            | 20               | 66               | 14                         |
| Butchers and Other Meat, Poultry, and Fish Processing Workers | 320            | 65                             | 20               | 61               | 19                         |
| Dishwashers                                                   | 370            | 70                             | 19               | 67               | 14                         |
| Packers and Packagers, Hand                                   | 590            | 110                            | 19               | 61               | 20                         |
| Laundry and Dry-Cleaning Workers                              | 220            | 40                             | 18               | 61               | 21                         |
| Dining Room and Cafeteria Attendants and Bartender Helpers    | 380            | 65                             | 17               | 70               | 13                         |
| Cooks                                                         | 2,590          | 425                            | 17               | 69               | 14                         |
| Carpenters                                                    | 1,330          | 210                            | 16               | 73               | 11                         |
| Bakers                                                        | 230            | 35                             | 16               | 66               | 18                         |
| Cleaners of Vehicles and Equipment                            | 420            | 65                             | 15               | 71               | 13                         |
| Other *unauthorized occupations**                             | 33,430         | 2,650                          | 8                | 78               | 14                         |
| All other occupations                                         | 108,650        | 2,300                          | 2                | 87               | 11                         |

Note: Occupations included in this table have at least 100,000 workers nationally and more than triple the national share of unauthorized immigrant workers. \*\* "Unauthorized occupations" have a higher percentage of workers who are unauthorized immigrants than the national average but do not qualify for a separate listing. All numbers are rounded independently and are not adjusted to sum to the total, civilian labor force or other totals. Percentages calculated from unrounded numbers. See Methodology for rounding rules. Occupations ranked by share of unauthorized immigrants and based on unrounded percentages.

Source: Pew Research Center estimates based on augmented 2012 American Community Survey data from Integrated Public Use Microdata Series (IPUMS)

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TABLE A7

**Detailed Industries with Highest Shares of Unauthorized Immigrant Workers, 2012***In thousands (unless otherwise specified)*

| <b>Detailed Industry</b>                                        | <b>Total Workers</b> | <b>Unauthorized Immigrants</b> |                  | <b>U.S.-born Share (%)</b> | <b>Legal Immigrant Share (%)</b> |
|-----------------------------------------------------------------|----------------------|--------------------------------|------------------|----------------------------|----------------------------------|
| <b>Total, Civilian Labor Force (with an industry)</b>           | <b>156,160</b>       | <b>Workers</b>                 | <b>Share (%)</b> | <b>83</b>                  | <b>12</b>                        |
| Landscaping services                                            | 1,430                | 350                            | 24               | 62                         | 15                               |
| Private households                                              | 990                  | 230                            | 23               | 54                         | 23                               |
| Cut and sew apparel manufacturing                               | 260                  | 50                             | 20               | 49                         | 31                               |
| Crop production                                                 | 1,220                | 240                            | 20               | 61                         | 19                               |
| Dry cleaning and laundry services                               | 330                  | 65                             | 19               | 57                         | 24                               |
| Services to buildings and dwellings                             | 1,460                | 275                            | 19               | 61                         | 20                               |
| Support activities for agriculture and forestry                 | 180                  | 35                             | 19               | 61                         | 20                               |
| Animal slaughtering and processing                              | 520                  | 95                             | 18               | 64                         | 18                               |
| Car washes                                                      | 200                  | 35                             | 18               | 71                         | 12                               |
| Bakeries, except retail                                         | 240                  | 40                             | 16               | 64                         | 19                               |
| Fruit and vegetable preserving and specialty food manufacturing | 190                  | 25                             | 13               | 69                         | 18                               |
| Animal production                                               | 580                  | 75                             | 13               | 79                         | 9                                |
| Construction                                                    | 10,270               | 1,250                          | 12               | 77                         | 11                               |
| Retail bakeries                                                 | 180                  | 20                             | 12               | 70                         | 17                               |
| Traveler accommodation                                          | 1,650                | 200                            | 12               | 67                         | 21                               |
| Specialty food stores                                           | 250                  | 30                             | 11               | 73                         | 16                               |
| Seafood and other miscellaneous foods, n.e.c.                   | 220                  | 25                             | 11               | 73                         | 16                               |
| Eating & drinking places                                        | 10,390               | 1,100                          | 11               | 78                         | 11                               |
| Miscellaneous wood products                                     | 220                  | 25                             | 10               | 80                         | 9                                |
| Other "unauthorized industries"***                              | 18,970               | 1,350                          | 7                | 79                         | 14                               |
| All other industries                                            | 106,400              | 2,450                          | 2                | 87                         | 11                               |

Note: Industries included in this table have at least 100,000 workers nationally and more than double the national share of unauthorized immigrant workers. \*\*\*"Unauthorized industries" have a higher percentage of workers who are unauthorized immigrants than the national average but do not qualify for a separate listing. All numbers are rounded independently and are not adjusted to sum to the total, civilian labor force or other totals. Percentages calculated from unrounded numbers. See Methodology for rounding rules. Industries ranked by share of unauthorized immigrants based on unrounded percentages.

Source: Pew Research Center estimates and based on augmented 2012 American Community Survey data from Integrated Public Use Microdata Series (IPUMS)

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Table A8

**Major Industry Groups, by Nativity and Status, 2012**

| Major Industry Group                                  | Total   | U.S. born | Legal Immigrants | Unauthorized Immigrants |
|-------------------------------------------------------|---------|-----------|------------------|-------------------------|
| <b>Civilian Labor Force (in thousands)</b>            |         |           |                  |                         |
| <b>Total, Civilian Labor Force (with an industry)</b> | 156,160 | 129,610   | 18,600           | 7,900                   |
| Agriculture, forestry, fishing and hunting            | 2,210   | 1,520     | 325              | 350                     |
| Mining                                                | 940     | 850       | 55               | 30                      |
| Construction                                          | 10,270  | 7,920     | 1,100            | 1,250                   |
| Manufacturing                                         | 16,350  | 13,150    | 2,150            | 1,050                   |
| Wholesale and retail trade                            | 22,540  | 19,180    | 2,400            | 950                     |
| Transportation and utilities                          | 7,540   | 6,350     | 925              | 250                     |
| Information                                           | 3,240   | 2,820     | 325              | 90                      |
| Financial activities                                  | 10,000  | 8,650     | 1,100            | 230                     |
| Professional and business services                    | 17,450  | 14,030    | 2,300            | 1,100                   |
| Educational and health services                       | 35,040  | 30,140    | 4,300            | 600                     |
| Leisure and hospitality                               | 15,620  | 12,380    | 1,850            | 1,400                   |
| Other services                                        | 7,710   | 5,960     | 1,100            | 625                     |
| Public Administration                                 | 7,260   | 6,680     | 575              | (x)                     |
| <b>Share of Industry (%)</b>                          |         |           |                  |                         |
| <b>Total, Civilian Labor Force (with an industry)</b> | 100.0   | 83.0      | 11.9             | 5.1                     |
| Agriculture, forestry, fishing and hunting            | 100.0   | 68.8      | <b>15.1</b>      | <b>16.1</b>             |
| Mining                                                | 100.0   | 90.9      | 6.0              | 3.1                     |
| Construction                                          | 100.0   | 77.1      | 10.7             | <b>12.2</b>             |
| Manufacturing                                         | 100.0   | 80.4      | <b>13.2</b>      | <b>6.3</b>              |
| Wholesale and retail trade                            | 100.0   | 85.1      | 10.7             | 4.2                     |
| Transportation and utilities                          | 100.0   | 84.3      | <b>12.4</b>      | 3.3                     |
| Information                                           | 100.0   | 86.9      | 10.3             | 2.8                     |
| Financial activities                                  | 100.0   | 86.5      | 11.1             | 2.3                     |
| Professional and business services                    | 100.0   | 80.4      | <b>13.3</b>      | <b>6.4</b>              |
| Educational and health services                       | 100.0   | 86.0      | <b>12.3</b>      | 1.7                     |
| Leisure and hospitality                               | 100.0   | 79.3      | 11.8             | <b>9.0</b>              |
| Other services                                        | 100.0   | 77.3      | <b>14.6</b>      | <b>8.2</b>              |
| Public Administration                                 | 100.0   | 91.9      | 8.1              | (x)                     |
| <b>Share of Status Group (%)</b>                      |         |           |                  |                         |
| <b>Total, Civilian Labor Force (with an industry)</b> | 100.0   | 100.0     | 100.0            | 100.0                   |
| Agriculture, forestry, fishing and hunting            | 1.4     | 1.2       | <b>1.8</b>       | <b>4.5</b>              |
| Mining                                                | 0.6     | 0.7       | 0.3              | 0.4                     |
| Construction                                          | 6.6     | 6.1       | 5.9              | <b>15.8</b>             |
| Manufacturing                                         | 10.5    | 10.1      | <b>11.6</b>      | <b>13.0</b>             |
| Wholesale and retail trade                            | 14.4    | 14.8      | 13.0             | 11.9                    |
| Transportation and utilities                          | 4.8     | 4.9       | <b>5.0</b>       | 3.2                     |
| Information                                           | 2.1     | 2.2       | 1.8              | 1.2                     |
| Financial activities                                  | 6.4     | 6.7       | 6.0              | 3.0                     |
| Professional and business services                    | 11.2    | 10.8      | <b>12.4</b>      | <b>14.0</b>             |
| Educational and health services                       | 22.4    | 23.3      | 23.2             | 7.4                     |
| Leisure and hospitality                               | 10.0    | 9.5       | <b>9.8</b>       | <b>17.7</b>             |
| Other services                                        | 4.9     | 4.6       | <b>6.0</b>       | <b>7.9</b>              |
| Public Administration                                 | 4.7     | 5.2       | 3.1              | (x)                     |

Note: Figures in **boldface** under the Share of Industry indicates an over-representation of legal immigrants or unauthorized immigrants compared with their share of the overall labor force. **Boldface** figures under the Share of Status Group indicates an over-representation of legal immigrants or unauthorized immigrants compared with the U.S. born population within each industry. (x) - Not applicable. All numbers are rounded independently and are not adjusted to sum to the total, civilian labor force or other totals. Percentages calculated from unrounded numbers. See Methodology for rounding rules.

Source: Pew Research Center estimates based on augmented 2012 American Community Survey data from Integrated Public Use Microdata Series (IPUMS)

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Table A9

**Major Occupation Groups, by Nativity and Status, 2012**

| Major Occupation Group                                  | Total   | U.S. born | Legal<br>Immigrants | Unauthorized<br>Immigrants |
|---------------------------------------------------------|---------|-----------|---------------------|----------------------------|
| <b>Civilian Labor Force (in thousands)</b>              |         |           |                     |                            |
| <b>Total, Civilian Labor Force (with an occupation)</b> | 156,660 | 130,090   | 18,700              | 7,900                      |
| Management, business, and financial                     | 21,720  | 18,880    | 2,400               | 425                        |
| Professional and related                                | 32,660  | 27,790    | 4,300               | 575                        |
| Service                                                 | 29,340  | 22,700    | 4,050               | 2,600                      |
| Sales and related                                       | 17,260  | 14,990    | 1,700               | 550                        |
| Office and administrative support                       | 21,230  | 18,900    | 1,850               | 450                        |
| Farming, fishing and forestry                           | 1,220   | 640       | 275                 | 325                        |
| Construction and extraction                             | 8,470   | 6,320     | 950                 | 1,200                      |
| Installation, maintenance and repair                    | 5,200   | 4,440     | 500                 | 250                        |
| Production                                              | 9,540   | 7,300     | 1,350               | 875                        |
| Transportation and material moving                      | 10,030  | 8,130     | 1,250               | 675                        |
| <b>Share of Occupation (%)</b>                          |         |           |                     |                            |
| <b>Total, Civilian Labor Force (with an occupation)</b> | 100.0   | 83.0      | 11.9                | 5.1                        |
| Management, business, and financial                     | 100.0   | 86.9      | 11.2                | 1.9                        |
| Professional and related                                | 100.0   | 85.1      | <b>13.1</b>         | 1.8                        |
| Service                                                 | 100.0   | 77.4      | <b>13.8</b>         | <b>8.8</b>                 |
| Sales and related                                       | 100.0   | 86.9      | 10.0                | 3.2                        |
| Office and administrative support                       | 100.0   | 89.0      | 8.8                 | 2.2                        |
| Farming, fishing and forestry                           | 100.0   | 52.4      | <b>21.8</b>         | <b>25.8</b>                |
| Construction and extraction                             | 100.0   | 74.7      | 11.1                | <b>14.2</b>                |
| Installation, maintenance and repair                    | 100.0   | 85.5      | 9.4                 | 5.0                        |
| Production                                              | 100.0   | 76.5      | <b>14.4</b>         | <b>9.1</b>                 |
| Transportation and material moving                      | 100.0   | 81.0      | <b>12.3</b>         | <b>6.7</b>                 |
| <b>Share of Status Group (%)</b>                        |         |           |                     |                            |
| <b>Total, Civilian Labor Force (with an occupation)</b> | 100.0   | 100.0     | 100.0               | 100.0                      |
| Management, business, and financial                     | 13.9    | 14.5      | 13.0                | 5.3                        |
| Professional and related                                | 20.8    | 21.4      | <b>23.0</b>         | 7.4                        |
| Service                                                 | 18.7    | 17.4      | <b>21.8</b>         | <b>32.6</b>                |
| Sales and related                                       | 11.0    | 11.5      | 9.2                 | 6.9                        |
| Office and administrative support                       | 13.6    | 14.5      | 10.0                | 5.8                        |
| Farming, fishing and forestry                           | 0.8     | 0.5       | <b>1.4</b>          | <b>4.0</b>                 |
| Construction and extraction                             | 5.4     | 4.9       | 5.0                 | <b>15.2</b>                |
| Installation, maintenance and repair                    | 3.3     | 3.4       | 2.6                 | 3.3                        |
| Production                                              | 6.1     | 5.6       | <b>7.3</b>          | <b>11.0</b>                |
| Transportation and material moving                      | 6.4     | 6.2       | <b>6.6</b>          | <b>8.4</b>                 |

Note: Figures in **boldface** under the Share of Occupation indicates an over-representation of legal immigrants or unauthorized immigrants compared with their share of the overall labor force. **Boldface** figures under the Share of Status Group indicates an over-representation of legal immigrants or unauthorized immigrants compared with the U.S. born population within each occupation. All numbers are rounded independently and are not adjusted to sum to the total, civilian labor force or other totals. Percentages calculated from unrounded numbers. See Methodology for rounding rules.

Source: Pew Research Center estimates based on augmented 2012 American Community Survey data from Integrated Public Use Microdata Series (IPUMS)

PEW RESEARCH CENTER

## Appendix B. Methodology and Terminology

The unauthorized immigrant estimates throughout this report are produced using a multistage method that subtracts the legal foreign-born population from the total adjusted foreign-born population; the residual then is used as the source of information about unauthorized immigrants. The main source of data for estimates from 2005 on is the U.S. Census Bureau's American Community Survey; estimates for 1995 and 2000 use the bureau's March Current Population Surveys. See Passel and Cohn 2014 for more detail.

"Foreign born" refers to an individual who is not a U.S. citizen at birth or who, in other words, was born outside the U.S., Puerto Rico or other U.S. territories and whose parents were not U.S. citizens. The terms "foreign born" and "immigrant" are used interchangeably. "U.S. born" refers to an individual who is a U.S. citizen at birth, including people born in the United States, Puerto Rico or other U.S. territories, as well as those born elsewhere to parents who were U.S. citizens. When referring to children of unauthorized immigrants, the terms "U.S. born" and "U.S. citizen" are used interchangeably; a small number of these children may be naturalized citizens.

The "legal immigrant" population is defined as people who have been granted legal permanent residence; those granted asylum; people admitted as refugees; and people admitted to the U.S. under a set of specific authorized temporary statuses for longer-term residence and work. This group includes "naturalized citizens," legal immigrants who have become U.S. citizens through naturalization; "legal permanent resident aliens" who have been granted permission to stay indefinitely in the U.S. as permanent residents, asylees or refugees; and "legal temporary migrants" (including students, diplomats and "high-tech guest workers") who are allowed to live and, in some cases, work in the U.S. for specific periods of time (usually longer than one year).

"Unauthorized immigrants" are all foreign-born noncitizens residing in the country who are not "legal immigrants." These definitions reflect standard and customary usage by the U.S. Department of Homeland Security and academic researchers. The vast majority of unauthorized immigrants entered the country without valid documents or arrived with valid visas but stayed past their visa expiration date or otherwise violated the terms of their admission. Some who entered as unauthorized immigrants or violated terms of admission have obtained work authorization by applying for adjustment to legal permanent status, obtaining Temporary Protected Status (TPS) or receiving Deferred Action for Childhood Arrivals (DACA) status. Data are very limited, but this "quasi-legal" group could account for as much as 10% of the unauthorized immigrant population. Many could also revert to unauthorized status.

The "labor force" refers to people ages 16 and older who are employed or looking for work.

**Rounding of Estimates.** All estimates for immigrant populations, legal and unauthorized, are presented as rounded numbers to avoid the appearance of unwarranted precision in the estimates. The rounding conventions for immigrant estimates, dependent somewhat on data sources, are:

|                         |                 |
|-------------------------|-----------------|
| Greater than 10,000,000 | Nearest 100,000 |
| 1,000,000-10,000,000    | Nearest 50,000  |
| 250,000-1,000,000       | Nearest 25,000  |
| 100,000-250,000         | Nearest 10,000  |
| 5,000-100,000           | Nearest 5,000   |
| <5,000                  | Shown as <5,000 |

State and national data for the total and U.S.-born populations are rounded to the nearest 10,000. Unrounded numbers are used for significance tests, for plotting charts and for computations of differences and percentages. Where differences are reported, they are computed from unrounded estimates and then rounded separately. Because each figure is rounded separately, the rounded estimates may not add to rounded totals. Similarly, percentages computed from rounded numbers may differ from the percentages shown in this report.

**Industry and Occupation Category Labels.** For ease of presentation, the full titles of many industry and occupation categories have been condensed from the Census Bureau's terminology. Data on what are called "major" industry categories are shown in Tables A2, A4 and A8, as well as in some figures in the text. Table A8 includes the full names of the industry categories, but in Tables A2 and A4 and the text, they are shortened as follows:

|                                             |                     |
|---------------------------------------------|---------------------|
| Agriculture, forestry, fishing, and hunting | Agriculture         |
| Mining                                      | no change           |
| Construction                                | no change           |
| Manufacturing                               | no change           |
| Wholesale and retail trade                  | Wholesale/retail    |
| Transportation and utilities                | no change           |
| Information                                 | no change           |
| Financial activities                        | no change           |
| Professional and business services          | Business services   |
| Educational and health services             | Transport/utilities |
| Leisure and hospitality                     | Leisure/hospitality |
| Other services                              | no change           |
| Public administration                       | no change           |



Data on “major” occupation categories are shown in Tables A3, A5 and A9, as well as in some figures in the text. Table A9 includes the full names of the industry categories, but in Tables A3 and A5 and the text, they are shortened as follows:

|                                       |                                  |
|---------------------------------------|----------------------------------|
| Management, business, and financial   | Management                       |
| Professional and related              | Professional                     |
| Service                               | no change                        |
| Sales and related                     | Sales                            |
| Office and administrative support     | Office support                   |
| Farming, fishing, and forestry        | Farming (sometimes agricultural) |
| Construction and extraction           | Construction                     |
| Installation, maintenance, and repair | Maintenance                      |
| Production                            | no change                        |
| Transportation and material moving    | Transportation                   |

The specific, detailed categories for industries and occupations used in Tables A6 and A7 are not condensed. References in the text, text charts and tables can be cross-referenced to the lists above.



## THE LIBRE INITIATIVE

Daniel Garza, Executive Director

Testimony to the Senate Homeland Security & Governmental Affairs Committee

*"Securing the Border: Defining the Current Population Living in the Shadows and Addressing Future Flows"*

Thursday, March 26, 2015

Chairman Johnson, Ranking Member Carper and members of the committee: thank you for inviting me to testify today. As the son of immigrants and the current Executive Director of the LIBRE Initiative, I will focus my testimony today on my personal story, our work with the Hispanic community and the need for legislative reform on immigration.

Waves of immigration permeate America's history. My personal story begins in 1942 - a time when labor to work the orchards and the fields was needed in America, as millions of our soldiers fought to defeat the fascist powers of Europe. We looked to Mexico, to Mexicans like my grandfather and uncles, who were asked to leave their families and hometowns to fill the need, as braceros.

As our G.I.'s were winning battles in the Pacific, European and North African theatres, laborers came in droves to harvest the bounty of our farms and orchards: laborers with diligent hands to plant seeds; to cultivate the fields and irrigate saplings; to make sure fruit trees were pruned, and blossoms were thinned; that fruits were kept warm from the cold, and vegetables were fumigated, picked, sorted, packed, stacked and transported to market and to our soldiers abroad.

During the 70's and 80's, not much had changed. This was still the way of life for our family - moving along the highways through the states of California, Nebraska and Washington following the crop seasons.

It is a way of life that takes its toll, and while my parents were legal residents, it was much harder for those living in the shadows.

I recall, at 16, a fellow worker walked over to my father, and said he decided he would be moving back to Mexico after five years of hard living in the United States. Overworked, poorly paid, unappreciated, and tired of living in the shadows, he said he had had enough. My dad

placed his hand on his shoulder, held it there for some time, and wished him well. He was gone by the end of that week, never to be seen again.

I suppose it's what some would call self-deportation.

At 17 years of age, I had dropped out of high school myself, working the orchards and fields, in order to help the family make ends meet.

But by the fall of '87 dad determined it was time for us to leave the fields for good. After 30 years of farm work, he had no retirement, no health plan, no vacation or sick leave days accrued. Quietly, without fanfare, we got in our car after filling the last bin of apples and simply moved on.

But I was fortunate my parents had invested their entire savings in a small business – a 16 unit motel just off the freeway in the small northwest town of Toppenish, Washington. After spending borrowed money on renovating the place, higher profits soon poured in, and after years of sacrifices, things were falling into place.

I had soon obtained a GED, and went off to college. Seventeen years after having dropped out of high school, I was appointed by President George W. Bush as his Associate Director for the Office of Public Liaison at the White House – to serve as his representative to the U.S. Latino community.

And this is what strikes me most about this exceptional country: it's that my parents (with their 4th grade education and all), my uncles, my cousins and my friends from school - who all started out as farm laborers –left the fields long ago. They moved on to become professionals, middle class Americans living in urban and metro areas. Their children have become lawyers, teachers, engineers, counselors, computer programmers – they have good, high paying jobs.

It is a testament to this nation - to our free market system and to the industrious character of those who come to America - that so many of us, millions who started out with nothing, achieved beyond our expectations. My family and I are but one example of this rugged individualism that made our nation the most powerful and prosperous nation on earth.

Today, 2 million migrants labor in our orchards and fields alone. When you count those who work tarring hot roofs, taking care of our old and milking dairy cows - or washing dishes in the humid back room of a restaurant and mowing lawns as I understand Chairman Johnson did - it goes up to millions and millions.

Our nation's ability to absorb waves upon waves of "the least of these" teaches me not to fear waves of poor immigrants coming to America.

Instead, I fear a growing government that hinders economic growth; that restricts opportunities. I worry about a government that would criminalize the rational activity of someone selling their labor to improve their condition, and another who buys labor in order to make a profit – which is what our current immigration law does.

That is not America's legacy, it is not who we are.

The arc of our nation's history shows that when Americans worked too hard, sacrificed too much and saw only the powerful flourishing while they suffered, the remedy was more freedom, not less. It was freedom that allowed us to flourish, to find our calling.

And so, if we were lifted up by freedom, shouldn't we work to pass on that same freedom to others?

LIBRE believes we should, which is why we work across the country providing information about our free market system; about how limiting the size and scope of government is essential to a growing and robust private sector, and how essential it is to honor our nation's legacy by honoring the virtues of hard work, self-reliance and personal responsibility.

We proudly provide services that uplift and develop a person's skills and talents, to better position them in the marketplace. We offer services such as English language tutoring, driver's license exam training, and valuable instruction to launch businesses such as entrepreneurship workshops. LIBRE staff and volunteers have partnered with other community service organizations to offer tax preparation, health checkups, and back-to-school events.

Our team works in Hispanic communities and neighborhoods around the country, and we offer our services at no cost to people across the country from Florida to Texas to Colorado. We believe that by helping Latinos and others acquire the tools they need to succeed in the free market, we enable them to build their own American Dream, and to contribute to a country that they love and to which they are deeply dedicated. We're thrilled to be one small part of a culture of service – of giving back to the community, and of helping people to build a better future together.

We don't ask the documented status of the individual because at The Libre Initiative, we believe freedom drives progress, and upholds the dignity of the individual - all individuals. It is freedom that harnessed the vast capacities of hard working, industrious Americans and made our nation the most prosperous, most powerful nation on earth – the kind of capacities so readily found in our immigrant community today.

Public policies must encourage investments in private enterprises, incentivize small and large businesses to expand, to buy new equipment, and hire more employees. In so doing, policies that seek to legalize the relationship between willing employers and willing employees must be part of our economic framework if we are to adequately address market demand for labor.

Today, more than 11 million undocumented immigrants live in the U.S., comprising approximately 5% of the national labor force.<sup>1</sup> These, who so often are simply labeled as “undocumented” or “illegal” and disregarded, are men and women - fathers, grandmothers, sisters and sons – all with a strong desire to contribute to our nation as they work for a better future. They are American in their principles – entrepreneurs, hard workers, dedicated students, and family-oriented. We do not negate the fact that they broke the law to get here, and that should be addressed in any legislative reform. But at their core, these are not bad people; it is a bad law.

It has been nearly 30 years since the last immigration reform in this country. The 1986 Immigration Reform and Control Act, while providing legal authorization for the undocumented population at the time, did little to address the future flow of immigrants.<sup>2</sup> Subsequent adjustments to visa quotas failed to keep pace with labor demand.<sup>3</sup> And the recent executive actions similarly ignore the issue. Immigrants come because there is opportunity here. As long as America is a prosperous nation, they will continue to do so. The status quo leaves our country vulnerable and only exaggerates the current situation – an exposed border and a shadow labor market.

Congress must act to provide the legal avenues necessary to absorb the current undocumented population as well as accommodate future immigrants. Both are essential. Immigration reform should address the children brought here through no fault of their own and allow for the undocumented population to ultimately become citizens after paying back taxes and any other appropriate penalties. But at a minimum, the U.S. should put in place a pragmatic, viable market-based worker visa program that legalizes voluntary employee-employer arrangements in a way that provides immigrant workers fixed, legal certainty, and allows our private sector to adequately respond to market forces.

To be successful, work visas must be provided for employment at all skill levels, avoiding the exceedingly complex, cumbersome H2 visa program requirements that effectively serve as a

<sup>1</sup> Passel, Jeffrey S. and D’Vera Cohn, “Unauthorized Immigrant Totals Rise in 7 States, Fall in 14: Decline in Those From Mexico Fuels Most State Decreases.” Washington, D.C. Pew Research Center’s Hispanic Trends Project. November 2014.

<sup>2</sup> Hinojosa-Ojeda, Raúl, “The Economic Benefits of Comprehensive Immigration Reform.” Cato Journal, Vol. 32, No. 1. Winter 2012.

<sup>3</sup> Id.

deterrent to participation. While many argue that such a program comes at a price to the native-born population, the long term impact of immigration is net positive for both the native-born and immigrant populations. Research illustrates that immigrants possess skills and preferences that compliment, rather than substitute, American workers.<sup>4</sup> Such complementary skills and labor add productivity and value to the U.S. economy.<sup>5</sup> This complimentary labor force is exceptionally needed in light of America's aging workers. Over the next 5 years, Hispanics will account for over 40% of the increase in U.S. employment, based on current immigration levels. However, if immigration reform is achieved and higher Hispanic immigration levels are permitted, figures suggested even higher GDP averages over the next 20 years.<sup>6</sup>

The program must be flexible and induce participation: that means charging reasonable fees; matching a willing worker with a willing employer; approval of application extended to the applicant's immediate family; renewal that is required every 3 years; and a program that allows for circularity and time for visa holders to seek improved job opportunities.

A more robust legal immigration system will also positively impact our nation's borders. Having a simple, predictable and effective legal immigration system would reduce the number of illegal border crossings each year. In 2014, there were nearly 500,000 apprehensions at the

Southwest border alone.<sup>7</sup> At current spending levels, the federal government would have to spend \$315 billion dollars over the next 20 years to continue protecting the border at current levels.<sup>8</sup> America does and should retain the ability to limit immigration in light of national security interest, but we know what arbitrary quotas do not work. Instead, a more employment based solution which balances the market demand for foreign labor with our national security interests should be pursued.

The majority of immigrants would not risk their lives or endure the cost of illegal immigration if there was a viable legal option that kept pace with market forces. But today, there is no such option.

Thank you.

<sup>4</sup> Furchtgott-Roth, D., "Does Immigration Increase Economic Growth?" Manhattan Institute for Policy Research. 2014.

<sup>5</sup> Peri, Giovanni., "The Effect of Immigrants on U.S. Employment and Productivity." Federal Reserve Bank of San Francisco. August 2010.

<sup>6</sup> Gillula, James, "Hispanic Immigration and US Economic Growth." IHS Economics. February 2015.

<sup>7</sup> Jeh Johnson, "Remarks: Border Security in the 21<sup>st</sup> Century." October 2014.

<sup>8</sup> Collins, Laura and Ben Gitis, "The Budgetary and Economic Costs of Addressing Unauthorized Immigration: Alternative Strategies." American Action Forum. 2015.

**Testimony before the U.S. Senate Committee on Homeland Security and  
Governmental Affairs  
Securing the Border: Defining the Current Population Living in the Shadows  
and Addressing Future Flows**

Madeline Zavodny  
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Adjunct Scholar, American Enterprise Institute  
March 26, 2015

*The views expressed in this testimony are those of the author alone and do not reflect those of Agnes  
Scott College or the American Enterprise Institute*

Chairman Johnson, Senator Carper, and Members of the Committee, thank you for inviting me to appear here today to discuss unauthorized immigration to the United States and guest worker programs. In the testimony that follows, I will first discuss why people become unauthorized immigrants. I will then discuss what we know about unauthorized immigrants in the U.S. labor market. At the end, I will discuss how future guest worker programs can affect immigration flows and the U.S. economy.

#### **Why do people become unauthorized immigrants?**

Estimates suggest there are 11-plus million unauthorized immigrants living in the United States. About 8.5 million of them are in the workforce, accounting for about 5 percent of all workers. Most of these immigrants crossed the border unlawfully, but a sizable share entered with a valid visa and have since overstayed that visa or violated its terms, such as working while on a non-work visa. The most important fact to understand about unauthorized immigrants is that almost none of them *want* to be unauthorized—they either have no way to attain legal status, or the pathway to legal status is so onerous that they believe they are better off remaining unauthorized. This is due to the many complexities—and the many failures—of U.S. immigration policy.

Simply put, our current immigration system results in large numbers of unauthorized immigrants because, although there is a large, broad-based demand for these workers, it is extremely hard for most people to receive a visa to live and work in the United States legally. People who are not the immediate relative of a U.S. citizen and who are not highly skilled face a long wait for legal permanent residency *if* they can find an eligible U.S. relative or a U.S. employer willing to sponsor them. Meanwhile, the H-2A and H-2B temporary foreign worker programs are cumbersome and costly for employers to use and, in the case of the H-2B program, capped at 66,000 visas per year. As a result, most employers hire unauthorized immigrants instead of using those programs: The number of workers hired through the H-2A and H-2B programs annually is equivalent to about 1.3 percent of the unauthorized immigrant workforce in the United States.

During the 1990s and early 2000s, the combination of strong demand for immigrant workers, a ready supply of people who wanted to work in the United States, even illegally, fairly lax workplace enforcement and a restrictive system for temporary and permanent visas resulted in a surge in the unauthorized immigrant workforce. The unauthorized population peaked in 2007, and then shrank slightly during the Great Recession of 2007-2009. It has since resumed growing, but at a much slower pace than before the recession.

Most unauthorized immigrants are relatively low skilled. Unauthorized immigrants are usually not able to access high-skilled jobs, so there is little incentive for high-skilled foreigners to become unauthorized immigrants. In addition, the vast majority of unauthorized immigrants are from Mexico and Central America, a region with lower average education levels than the United States.

The wage gains to immigrant workers are considerable, and the unauthorized are no exception. Although research suggests that unauthorized immigrants earn less than they would if they had legal status, unauthorized immigrants earn far more than they would in their origin country.<sup>1</sup>

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<sup>1</sup> Studies suggest wage gains of about 6-13% from acquiring legal status, suggesting a wage penalty for lacking legal status. The studies include Rivera-Batiz, F.L. (1999), "Undocumented Workers in the Labor Market: An Analysis of



Michael Clemens, Claudio E. Montenegro and Lant Pritchett show that the average Mexican worker who migrates to the United States earns about 2.5 times as much as he would in Mexico, taking into account differences in the cost of living.<sup>2</sup> This is equivalent to an annual income gain of about \$9200. For workers from Guatemala, wages are 2.9 times higher in the United States; Panama, 3.4 times; and Nicaragua, 3.5 times. Gordon Hanson estimates that in 2000 the average hourly wage for a male with nine years of education was \$2.40 in Mexico, compared with \$8.70 for recent Mexican immigrants in the United States (adjusting for differences in the cost of living).<sup>3</sup> Working 35 hours a week, this would amount to an annual income gain of more than \$11,000.

Wage gains are, of course, not the only motivation behind unauthorized immigration. Desire to live with family members or to provide their children with a better education or a safer community also motivate unauthorized immigrants to come here. In addition, experience and skills gained while working in the United States can lead to higher earnings if immigrants return home. Among Mexicans who return after migrating to the United States, the labor market experience they acquired in the United States is worth twice as much as the experience they would have acquired in Mexico had they not migrated.<sup>4</sup>

It is worth noting that historically many unauthorized immigrants did not settle permanently in the United States. Instead, they worked here temporarily, saved some money and returned home; many repeated this on a seasonal basis for years but ultimately retired at home, where their family members had remained. Since the 1980s, however, there has been a gradual shift toward unauthorized immigrants settling in the United States and reuniting with family members here. One reason for this was the 1986 Immigration Reform and Control Act (IRCA) legalization program, which enabled some 2.7 million unauthorized immigrants to receive permanent legal status.<sup>5</sup> Another reason is the increased difficulty in crossing the U.S.-Mexico border due to tighter border security. As it has become harder to re-enter the United States, unauthorized immigrants have increased their length of stay here.<sup>6</sup>

#### **Unauthorized immigrants in the labor market**

Despite the large number of unauthorized immigrant workers in the United States, their economic impact is quite small. Conventional economic models suggest that having unauthorized immigrant workers account for about 5 percent of the workforce adds about 0.03

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the Earnings of Legal and Illegal Mexican Immigrants in the United States," *Journal of Population Economics* 12: 91-116; Kossoudji, S. A., and Cobb-Clark, D. A. (2002), "Coming out of the Shadows: Learning about Legal Status and Wages from the Legalized Population," *Journal of Labor Economics* 20: 598-628.

<sup>2</sup> Clemens, M., Montenegro, C., and Pritchett, L. (2009), "The Place Premium: Wage Differences for Identical Workers across the US Border," Harvard University, John F. Kennedy School Faculty Research Working Paper Series RWP09-004.

<sup>3</sup> Hanson, G.H. (2006), "Illegal Migration from Mexico to the United States," *Journal of Economic Literature* 44: 869-924.

<sup>4</sup> Reinhold, S., and Thom, K. (2013), "Migration Experience and Earnings in the Mexican Labor Market," *Journal of Human Resources* 48: 768-820.

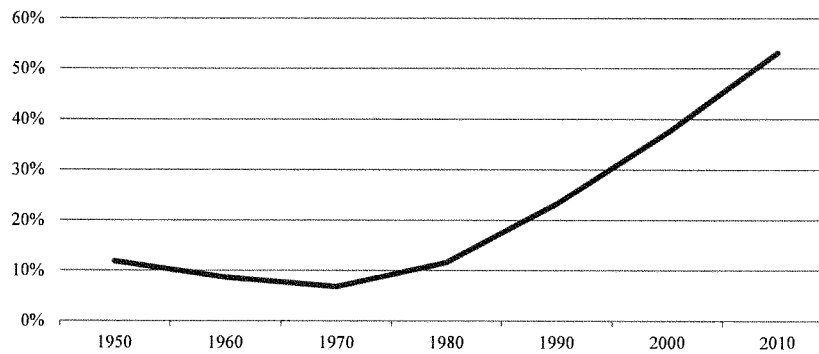
<sup>5</sup> Reyes, B.I. (2001), "Immigrant Trip Duration: The Case of Immigrants from Western Mexico," *International Migration Review* 35: 1185-1204.

<sup>6</sup> Angelucci, M. (2012), "U.S. Border Enforcement and the Net Inflow of Mexican Illegal Migration," *Economic Development and Cultural Change* 60: 311-357; Reyes, B.I. (2004), "Changes in Trip Duration for Mexican Immigrants to the United States," *Population Research and Policy Review* 23: 235-257.

percent to U.S. gross domestic product (GDP) annually.<sup>7</sup> This estimate does not include the income of the unauthorized immigrants themselves. The aggregate effect is so small because the U.S. economy is so huge, and also because most of the gains accrue to unauthorized immigrants.

Despite the small aggregate effect of unauthorized immigrant workers, they are an important source of low-skilled labor in the U.S. economy. Immigrants account for about one-half of workers in the United States who have not completed high school. This share has increased markedly from 1950 to 2010 (see figure 1). The majority of these less-educated immigrants probably is unauthorized or had unauthorized status at some point.

**Figure 1. The Share of Low-Skilled Workers Comprised of Immigrants Has Risen over Time**



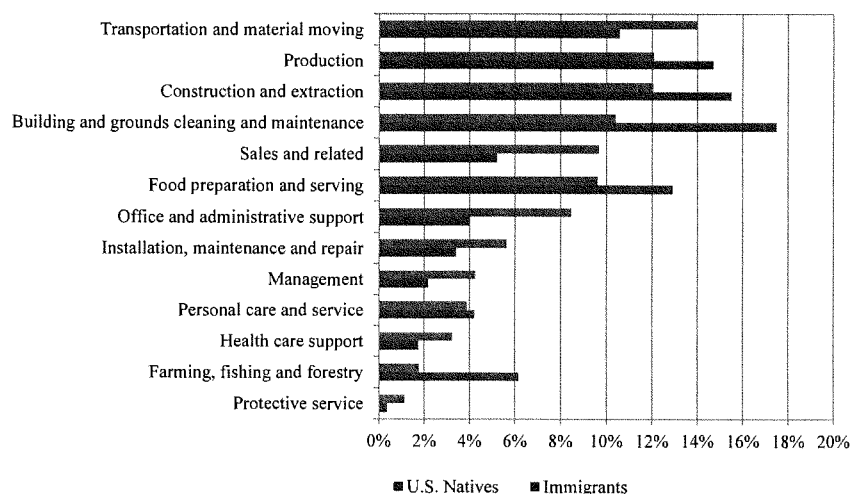
Source: Calculations based on 1950-2000 Censuses and 2010 American Community Survey data from Ruggles, S., et al. (2010), Integrated Public Use Microdata Series: Version 5.0 [Machine-readable database], <https://usa.ipums.org/usa/>. The samples include employed individuals aged 20-64 who have not finished high school or equivalent.

Unauthorized immigrants are concentrated in the agricultural, construction and manufacturing sectors, although they are also overrepresented in service sectors such as leisure and hospitality services (e.g., restaurants and hotels). As figure 2 shows, the shares of low-skilled immigrants (combining unauthorized and legal immigrants) who work in cleaning, cooking and farming-related occupations are much higher than the corresponding shares of low-skilled U.S. natives. In addition, low-skilled immigrants hold jobs that are more physically arduous than low-skilled U.S. natives do.<sup>8</sup>

<sup>7</sup> Hanson, G.H. (2009), "The Economics and Policy of Illegal Immigration in the United States," Migration Policy Institute, <http://www.migrationpolicy.org/pubs/Hanson-Dec09.pdf>.

<sup>8</sup> Zavodny, M., and Jacoby, T. (2013), "Filling the Gap: Less-Skilled Immigration in a Changing Economy," American Enterprise Institute and ImmigrationWorks, [http://www.aei.org/wp-content/uploads/2013/06/-zavodny-filling-the-gap-immigration-report\\_140631709214.pdf](http://www.aei.org/wp-content/uploads/2013/06/-zavodny-filling-the-gap-immigration-report_140631709214.pdf).

**Figure 2. Low-Skilled U.S. Natives and Immigrants Work in Different Occupations**



Source: Calculations based on 2011 American Community Survey using data from Ruggles et al. (2010). The sample includes civilian workers aged 20-64.

Unauthorized immigrants compete for jobs primarily with each other and with low-skilled legal immigrants, and to a smaller extent with low-skilled U.S. natives. Labor market competition between unauthorized immigrants and low-skilled U.S. natives—primarily those who have not finished high school—is limited by differences in the two groups' skill sets, sectors and geographic locations. For example, low-skilled immigrants are much more likely to live in California and Texas than low-skilled U.S. natives, who are in turn more likely to live in the South and Midwest. Importantly, differences in English ability distinguish U.S. natives from low-skilled immigrant workers. Research suggests that low-skilled U.S. natives have responded to immigrant inflows by moving into communications-intensive jobs.<sup>9</sup> In addition, U.S. natives benefit from having a driver's license, unlike many unauthorized immigrants.

Several studies indicate that unauthorized immigration has little effect on U.S. natives' earnings. Increased border enforcement along the U.S.-Mexico border has little effect on wages in U.S. border cities, suggesting that undocumented immigration has a minimal impact on wages in

<sup>9</sup> Peri, G., and Sparber, C. (2009): "Task Specialization, Immigration, and Wages," *American Economic Journal: Applied Economics* 1: 135-69.

those areas.<sup>10</sup> The inflow of unauthorized Mexican immigrants during the 1990s did not significantly reduce wages among young adult men in California in 2000.<sup>11</sup> Evidence from Georgia indicates that legal workers—natives and immigrants combined—earn only 0.15 percent less if they work for a firm that hires workers who appear to be undocumented immigrants than those who work for a firm that does not.<sup>12</sup> Further there is no evidence that legal workers are displaced when Georgia employers hire workers who appear to be undocumented immigrants.<sup>13</sup> A national study concludes that recent Latino immigrants, many of whom are undocumented, do not hurt earlier Latino immigrants' labor market outcomes in the United States.<sup>14</sup> More broadly, most research on the effects of immigration on U.S. natives' employment and earnings finds a small negative or zero effect, although a few studies do find evidence of sizable negative impacts on competing natives.<sup>15</sup>

Meanwhile, low-skilled immigration creates jobs higher up the skill ladder and leads to lower prices for goods and services. For example, having more construction laborers means lower construction costs, greater demand for single-family homes and more jobs for electricians, construction supervisors, real estate agents and the like. Unauthorized immigration particularly benefits highly skilled U.S. natives. Research shows that low-skilled immigration to the United States, much of it unauthorized, increases average hours of paid work and decreases hours of household production among highly educated U.S.-born women.<sup>16</sup> The ready availability of immigrants as housekeepers, gardeners and child care providers increases highly-educated

<sup>10</sup> Hanson, G.H., Robertson, R., and Spilimbergo, A., (2002), "Does Border Enforcement Protect U.S. Workers from Illegal Immigration?" *Review of Economics and Statistics* 84: 73–92.

<sup>11</sup> Marcelli, E.A. (2008), "Unauthorized Mexican Immigration and Youth Labor Market Outcomes in California in the 1990s," in: DeFreitas, G. (ed.), *Young Workers in the Global Economy: Job Challenges in North America, Europe and Japan* (Edward Elgar, Cheltenham, UK).

<sup>12</sup> Hotchkiss, J.L., Quispe-Agnoli, M., and Rios-Avila, F. (2012), "The Wage Impact of Undocumented Workers," Federal Reserve Bank of Atlanta Working Paper No. 2012–4.

<sup>13</sup> Hotchkiss, J.L., and Quispe-Agnoli, M. (2013), "The Expected Impact of State Immigration Legislation on Labor Market Outcomes," *Journal of Policy Analysis and Management* 32: 34–59.

<sup>14</sup> Kugler, A., and Yuksel, M. (2011), "Do Recent Latino Immigrants Compete for Jobs with Native Hispanics and Earlier Latino immigrants?" in: Leal, D.L., and Trejo, S.J. (eds.), *Latinos and the Economy: Integration and Impact in Schools, Labor Markets, and Beyond* (Springer, New York).

<sup>15</sup> Studies that find little evidence of significant adverse effects of immigration on natives' labor market outcomes include Card, D. (2001), "Immigrant Inflows, Native Outflows, and the Local Labor Market Impacts of Higher Immigration," *Journal of Labor Economics* 19: 22–64; Card, D. (2005), "Is the New Immigration Really So Bad?" *Economic Journal* 115: F300–F323; Ottaviano, G.I.P., and Peri, G. (2012), "Rethinking the Effect of Immigration on Wages," *Journal of the European Economic Association* 10: 152–197; Orrenius, P.M., and Zavodny, M. (2007), "Does Immigration Affect Wages? A Look at Occupation-Level Evidence," *Labour Economics* 14: 757–773; Shierholz, H. (2010), "Immigration and Wages: Methodological Advancements Confirm Modest Gains for Native Workers," Economic Policy Institute, <http://www.epi.org/publication/bp255/>. Studies that find negative effects of immigration on natives' labor market outcomes include Borjas, G.J. (2003), "The Labor Demand Curve Is Downward Sloping: Reexamining the Impact of Immigration on the Labor Market," *Quarterly Journal of Economics* 118: 1335–1374; Borjas, G.J., Freeman, R.B., and Katz, L.F. (1997), "How Much Do Immigration and Trade Affect Labor Market Outcomes?" *Brookings Papers on Economic Activity* 1: 1–90; Borjas, G.J., Grogger, J., and Hanson, G.H. (2010), "Immigration and the Economic Status of African-American Men," *Economica* 77: 255–282.

<sup>16</sup> Cortes, P., and Tessada, J. (2011), "Low-skilled Immigration and the Labor Supply of Highly Skilled Women," *American Economic Journal: Applied Economics* 3: 88–123.

women's labor supply in the marketplace while decreasing it in the home. It also enables highly skilled U.S.-born women to more easily combine having a career and a family.<sup>17</sup>

Estimates suggest that around one-half of unauthorized immigrant workers are in the formal sector, or working on the books. The Congressional Budget Office estimates that about one-half of unauthorized immigrant workers have payroll taxes deducted from their paychecks.<sup>18</sup> A slightly smaller share of unauthorized immigrants pays federal income taxes. Unauthorized immigrants who work in the informal sector do so in one of several ways: 1) They may work off the books for an employer that also hires other workers on the books. An example is a restaurant that pays some workers on the books but others off the books. 2) They may work for a small employer that only hires workers off the books. An example is a household that hires a nanny, a housekeeper or a gardener and does not withhold any payroll or income taxes for that worker but is legally required to do so.<sup>19</sup> 3) They may work for themselves. Examples include a day laborer who waits in front of a home improvement store every day for work, and someone who fixes cars for cash.

Research suggests that E-Verify requirements drive immigrants into informal employment. After Arizona became the first state in 2007 to require employers to use E-Verify to establish that newly hired workers are legally authorized to work in the United States, self-employment among noncitizen Hispanic male immigrants with at most a high school diploma doubled there compared with other states.<sup>20</sup> At the same time, wage-and-salary employment (formal sector employment) declined substantially. As these requirements have become more common across the country, informal sector employment probably has risen among unauthorized immigrants.

#### **Future guest worker programs**

The United States actually has the largest guest worker program in the world—but it is not a formal program that involves temporary legal status. We have the largest number of unauthorized immigrants of any country in the world. For decades, we have chosen to tolerate a large and growing population of unauthorized immigrants rather than adopt the substantial reforms needed to reduce unauthorized immigration. These reforms include well-designed guest worker programs and more interior enforcement.

Reducing unauthorized immigration requires recognizing that employer demand for foreign workers is strong, particularly during times of robust economic growth, and that the supply of potential immigrants is enormous. Given these realities, the United States should try to channel

<sup>17</sup> Furtado, D., and Hock, H. (2010), "Low Skilled Immigration and Work-Fertility Tradeoffs Among High Skilled US Natives," *American Economic Reviews Papers & Proceedings* 100: 224-228.

<sup>18</sup> Congressional Budget Office (2007), "The Impact of Unauthorized Immigrants on the Budgets of State and Local Governments," <http://www.cbo.gov/sites/default/files/12-6-immigration.pdf>. See also Goss, S., et al (2013), "Effects of Unauthorized Immigration on the Actuarial Status of the Social Security Trust Funds," *Social Security Administration Actuarial Note No. 151*, [http://www.socialsecurity.gov/oact/NOTES/pdf\\_notes/note151.pdf](http://www.socialsecurity.gov/oact/NOTES/pdf_notes/note151.pdf); Council of Economic Advisers (2005), *Economic Report of the President*, [http://www.gpoaccess.gov/eop/2005/2005\\_erp.pdf](http://www.gpoaccess.gov/eop/2005/2005_erp.pdf).

<sup>19</sup> Employers are required to make Social Security payments and withhold taxes for workers who earned more than \$1900 in 2015.

<sup>20</sup> Bohn, S., and Lofstrom, M. (2013), "Employment Effects of State Legislation," in: Card, D., and Raphael, S. (eds.), *Immigration, Poverty and Socioeconomic Inequality* (New York: Russell Sage Foundation).

immigration into legal streams. A well-designed guest worker program would respond to the business cycle, allowing a larger number of workers to enter when the economy is growing faster. The number of guest workers admitted could be based on measures of labor market tightness, such as the unemployment rate and employment growth, and indicators of overall economic activity, such as GDP growth.

A well-designed program would allow employers to hire workers who have the skills they seek. Employers better know their needs than any bureaucrat or computer algorithm. There is little economic reason for a guest worker program to target specific sectors or regions. After all, if U.S. workers are readily available, an employer will have little reason to turn to the guest worker program. Of course, a guest worker program needs to involve enforcement of minimum wage laws, overtime pay requirements and workplace safety and health regulation. Payroll tax treatment and employer-sponsored health insurance requirements for guest workers must also be equivalent to those for domestic workers.

Like the current H-2A and H-2B programs, a guest worker program should encourage circularity by allowing guest workers to come back to work in the United States in the future if they return home when their contract is up. Another good way the current H-2A and H-2B programs encourage circularity is by not allowing temporary foreign workers to bring their family members.

Unlike the current H-2A and H-2B programs, a well-designed program would allow visa portability, or for guest workers to easily move across employers. If an employer offers a higher wage or better working conditions, a guest worker should be able to move between jobs. Allowing market forces to work is one of the best ways to protect U.S. workers from unfair competition from guest workers. Portability combined with enforcement of current laws would help ensure that employers are not able to exploit guest workers. Market forces are a better gauge of labor supply and demand than attempts to measure prevailing wages for specific sectors and regions, which is difficult to do and can give quickly outdated estimates. Setting a maximum number of guest workers that varies with the business cycle and allowing those workers to easily move across employers would better protect U.S. workers from unfair competition than current policy does.

As we have witnessed, many employers will hire unauthorized immigrant workers instead of utilizing guest worker programs if it is cheaper and easier to do so. Unauthorized immigrant workers are essentially a spot market—they're usually available when and where vacancies arise. The H-2A and H-2B programs, in contrast, require months of costly paperwork before employers can hire workers. It is no wonder that so many employers have preferred to hire unauthorized immigrant workers—the somewhat amazing fact is actually that some employers have used the H-2A and H-2B programs and that the H-2B program runs out of visas every year. A well-designed guest worker program needs to try to mimic a spot market as much as possible. Portability can help achieve this, as can increasing the number of guest workers when labor markets tighten.

More interior enforcement, particularly at workplaces, is vital to the success of a guest worker program. Requiring all employers to use E-Verify would help choke off the jobs magnet that

attracts most unauthorized immigrants. Research on states that have adopted universal E-Verify requirements finds that these requirements have substantially reduced the population of likely unauthorized immigrants in those states. Labor outcomes worsen for likely unauthorized immigrants while improving for less-educated U.S. natives.<sup>21</sup> A combination of universal E-Verify and a well-designed guest worker program seems the best way to reduce unauthorized immigration while fostering economic growth.

Finally, it is important to recognize that it is not feasible to have no unauthorized immigration at all. The costs of doing so would far outweigh the benefits. U.S. borders can be made secure up to a point, but it is not possible to prevent all unauthorized entries and certainly not all visa overstays. Instead, the United States should focus on reducing the incentives for unauthorized immigration through a combination of a well-designed guest worker program and more workplace interior enforcement.

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<sup>21</sup> See, for example, Bohn, S., and Lofstrom, M. (2013), "Employment Effects of State Legislation," in: Card, D., and Raphael, S. (eds.), *Immigration, Poverty and Socioeconomic Inequality* (New York: Russell Sage Foundation); Orrenius, P.M., and Zavodny, M. (2015), "The Impact of E-Verify Mandates on Labor Market Outcomes," *Southern Economic Journal* (forthcoming); Amuedo-Dorantes, C., and Bansak, C. (2014), "Employment Verification Mandates and the Labor Market Outcomes of Likely Unauthorized and Native Workers," *Contemporary Economic Policy* 32: 671-680.



## Statement of the U.S. Chamber of Commerce

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**ON: "SECURING THE BORDER: DEFINING THE  
CURRENT POPULATION LIVING IN THE SHADOWS  
AND ADDRESSING FUTURE FLOWS"**

**TO: SENATE COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENT AFFAIRS**

**DATE: MARCH 26, 2015**

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1615 H Street NW | Washington, DC | 20062

The Chamber's mission is to advance human progress through an economic,  
political and social system based on individual freedom,  
incentive, initiative, opportunity and responsibility.



The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96 percent of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 businesspeople participate in this process.

Testimony  
before United States Senate Committee on Homeland Security and Government Affairs  
Thursday, March 26, 2015

Hearing on  
Securing the Border: Defining the Current Population Living in the Shadows and  
Addressing Future Flows

Testimony of  
Randel K. Johnson  
Senior Vice President  
Labor, Immigration and Employee Benefits  
U.S. Chamber of Commerce

On September 7, 2001, U.S. Chamber of Commerce President and CEO Tom Donohue testified before the Senate Immigration Subcommittee regarding immigration reform. The expectation of many in the Senate hearing room was that immigration legislation would soon be voted on in the Senate and quickly moved to the House. That timetable of course changed after September 11<sup>th</sup>, and properly so, while Congress created a new Department of Homeland Security and the nation grappled with pressing national security concerns. But over the ensuing years the Congress has continued to be unable to pass commonsense immigration reform. There are many reasons—and much finger-pointing.

Underpinning this gridlock are misconceptions about the role of immigrants in the United States. The U.S. Chamber of Commerce addressed many of these misconceptions in its earlier publication [Immigration Myths and Facts](#), to provide a summary of the macroeconomic studies that rebut the contention that immigrants are a burden on federal, state, and local tax rolls and take away jobs from native-born Americans. In our more recent publication [Open for Business: Spurring Local Economic Growth by Welcoming Immigrants](#), we summarize some of the latest experiences of state and local governments, working with partners in the private sector, in recruiting immigrants into their communities to revitalize their economies. This revitalization in many communities recognizes both that immigrants create businesses as entrepreneurs and fill gaps in the local labor force, the former phenomenon addressed in an earlier study we completed, [Immigrant Entrepreneurs: Creating Jobs and Strengthening the Economy](#).

Most Americans and most Members of Congress, of all political stripes, appreciate that immigration is a key aspect of our nation's heritage.<sup>1</sup> As a board member of an immigration restrictionist group has said, "Of course I admire and respect immigrants, as we all should because every American is either an immigrant or the descendent of ancestors who came here from

<sup>1</sup> Illustrating the point, from the conservative view: "Every one of us—whether it's us, or our parents, or our grandparents or our great-grandparents—we all are the children of those who fled oppression seeking freedom. I think that's the most fundamental DNA of what it means to be an American." (Sen. Ted Cruz – R-TX); "Immigration is a vital component that helped found our country and continues to make it great." (Sen. Mike Lee – R-UT); "America's freedoms and opportunities draw people from every nation." (Rep. Raúl Labrador – R-ID). And by way of example from the liberal perspective: "The United States is a proud nation of immigrants." (Rep. Luis Gutiérrez – D-IL); "The rich tapestry of our country came together through immigration." (Sen. Elizabeth Warren – D-MA).

somewhere else.”<sup>2</sup> While there is near universal devotion to our nation’s immigrant heritage, that is not enough to drive a problem-solving commitment on immigration; instead it just means that all are passionate about the subject.

But it is time to move past passion, to problem solving. Members of Congress and the president are elected to work together to solve our country’s problems – thus, not finalizing meaningful, passable pieces of legislation that can be signed into law to address the dysfunction of our immigration system should not be an option. This goal does not dictate any set legislative path. In the last Congress, the Senate passed a comprehensive bill but that is only one possible approach. Other routes can be taken, while being fully responsive to the reality that many aspects of reform have interlocking components.

The Chamber supports immigration because immigrants have always been a key to the success of our economy. Thus, we will continue to champion commonsense immigration reform, of which future flows of temporary foreign workers – the topic of this hearing – is one key component.

Although our statement is lengthy, its major points can be summarized as follows:

- First, expanded temporary worker programs, properly constructed, will aid economic growth and enhance border control efforts and national security. Moreover, these programs can be constructed in such a way to ensure that employers are only utilizing them when U.S. workers are not available for the jobs that need to be filled by employers in order to operate.
- Second, the current existing temporary worker programs are extremely difficult to use and are capped at unrealistically low levels, particularly when viewed against the backdrop of a workforce with 148 million workers employed across the country.
- Third, demographic data, including educational trends and estimates from the Bureau of Labor Statistics (BLS) concerning future job growth, indicate that we have an aging workforce and will have shortages in a variety of types of jobs in the future. Properly constructed temporary worker programs can help meet these challenges.
- Fourth, extensive data demonstrate that immigration, as a whole, is beneficial to the nation.
- Fifth, there is a clear need to develop and train more U.S. workers in the occupations where employers have unfilled jobs. The U.S. Chamber and its members are undertaking many activities to meet this goal.

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<sup>2</sup> Professor Jan Ting, member of the board of the Center for Immigration Studies, an immigration restrictionist organization, testifying before the Senate’s Immigration Subcommittee, December 10, 2014.

## **REFORMING TEMPORARY WORKER PROGRAMS SO THEY IMPROVE BORDER CONTROL, PROTECT AMERICAN WORKERS, AND REFLECT ECONOMIC REALITIES WHILE EXPANDING ECONOMIC GROWTH**

There has been sharp disagreement about the extent to which our nation needs or can assimilate foreign-born workers and the extent to which Congress should revise U.S. immigration laws to both reflect the realities at the border and in the economy, while protecting our domestic workforce.

### **A. LEGAL LESSER-SKILLED VISA PROGRAMS AND BORDER CONTROL**

It is clear as a matter of logic that legal temporary worker programs for lesser-skilled workers would enhance U.S. security and border control. “One cannot secure the border exclusively at the border; security requires enforcement, but enforcement requires meeting legitimate needs in legitimate ways.”<sup>3</sup> To be blunt, and less academic, job availability in this country will always be a magnet for those in less well-off countries that are looking to better themselves and their families. Unfortunately, that magnet has led to illegal immigration, despite significant efforts at improved border control. The U.S. can help eliminate the incentive for illegal immigration if temporary worker programs can be used to fill available jobs – assuming that efforts have already been made to fill those jobs through the recruitment of U.S. workers. All such temporary worker programs would not only provide a legal, systematic, and controllable process for the entry (and departure) of workers, but would also mean that each individual can be checked for any type of national security or public safety issue.

This is hardly a novel point, but is worth reemphasizing. As several national security experts have stated:

“An appropriately designed temporary worker program should relieve this pressure on the border. We need to accept the reality that our strong economy will continue to draw impoverished job seekers, some of whom will inevitably find a way to enter the country to fill jobs that are available. A successful temporary worker program should bring these economic migrants through lawful channels. Instead of crossing the Rio Grande or trekking through the deserts, these economic migrants would be interviewed, undergo background checks, be given tamper-proof identity cards, and only then be allowed in our country. And the Border Patrol would be able to focus on the real threats coming across our border. ...”<sup>4</sup>

It is well-understood that most unauthorized immigrants in the U.S. came, or remain, for economic opportunity and are working to support their families in jobs that do not require post-secondary education.<sup>5</sup> Importantly, labor migration for this group is often based on a desire not to migrate permanently, but instead to temporarily migrate in order to work, and then to return home

<sup>3</sup> Michael A. Clemens and Lant Pritchett, “Temporary Work Visas: A Four-Way Win for the Middle Class, Low-Skill Workers, Border Security, and Migrants” (Center for Global Development, April 2013) [http://www.cgdev.org/sites/default/files/archive/doc/full\\_text/CGD%20Briefs/3120183/time-bound-labor-access.html](http://www.cgdev.org/sites/default/files/archive/doc/full_text/CGD%20Briefs/3120183/time-bound-labor-access.html).

<sup>4</sup> See Prepared Statement of the Coalition for Immigration Security for a hearing entitled “Guest Worker Programs: Impact on the American Workforce and U.S. Immigration Policy,” 109<sup>th</sup> Congress, viewed online March 22, 2015, <http://www.gpo.gov/fdsys/pkg/CHRG-109hhrg28808/html/CHRG-109hhrg28808.htm>.

<sup>5</sup> See, e.g., “8<sup>th</sup> Anniversary Roundtable – The Department of Homeland Security, Year 8,” discussion at Georgetown University with Secretaries Ridge, Chertoff, and Napolitano. “Question: Isn’t it true that most illegal immigration really has to do with economic issues, people driven by jobs? Answer, Secretary Chertoff: Yes. No question.” <http://www.dhs.gov/8th-anniversary-roundtable-transcript>.

to their families.<sup>6</sup> Measures to stop unauthorized migration without creating channels for authorized movement simply do not and will not work and cut off natural circular, repeat migration patterns.<sup>7</sup>

Of the many inadequacies of the existing U.S. immigration system, few are as damaging – with worse consequences for U.S. border control and national security – than the insufficiencies of visa programs that could provide for an orderly and legal means for less-skilled immigrants seeking to enter the country to work in the United States when there are jobs left unfilled by U.S. workers. The failures of current U.S. immigration law regarding visa programs for lesser-skilled but essential workers<sup>8</sup> means that the U.S. does not provide any real-world alternative to unauthorized migration and, therefore, establishing and revising such programs is a key component of the level of border security needed to deter illegal immigration.

As leading development economists have concluded:

“What clearly deters return migration, as numerous studies have shown, is harsh measures to stop unauthorized migration without creating channels for authorized movement such as opportunities for authorized guest work. Because there is no legal channel for migration, enforcement-only policies lead many unauthorized migrants to fear that they will lose the future option to work in the United States if they return home.”<sup>9</sup>

The economic benefit of entering, or remaining, without authorization is a key, if not the principal, factor in the decision-making process of unauthorized workers in the United States. However, social scientists who have looked at the question<sup>10</sup> have found that economic benefit is not the sole driver.<sup>11</sup>

A variety of factors prompt an individual migrant’s decision to try to enter the United States illegally: The likelihood of entering successfully, including how many attempts to enter will be needed; the costs of securing a successful entry; the consequences of an unsuccessful entry; and the expected benefits of gaining entry into the U.S. including the probability of finding work.<sup>12</sup>

<sup>6</sup> See, e.g., research of Emily Ryo, a professor of law and sociology at the University of Southern California, as she describes in “Deciding to Cross: Norms and Economics of Unauthorized Migration” (78 *American Sociological Review*, July 2013, at p. 574-603) <http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=eryo>.

<sup>7</sup> See, e.g., research of Fernando Riosmena and Belinda Reyes in the book *Crossing the Border* (Jorge Durand and Douglas Massey, Mexican Migration Project, 2004).

<sup>8</sup> See summary of lesser-skilled visa program issues <http://immigration.uschamber.com/uploads/sites/392/1-ess-Skilled-percent20Future-percent20Flow-percent202013-percent20with-percent20demand-percent20graphic.pdf>.

<sup>9</sup> See, statement for the record by Michael Clemens, Center for Global Development, and citations therein, before the House Committee on Education and the Workforce, March 2013 hearing on lesser-skilled guestworkers, <http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg79739/pdf/CHRG-113hhrg79739.pdf> p. 58 of the Hearing Report.

<sup>10</sup> See, Emily Ryo, “Less Enforcement, More Compliance” (Volume 62 *UCLA Law Review* Issue 3, March 2015, forthcoming) <http://works.bepress.com/cgi/viewcontent.cgi?article=1013&context=eryo>, pp. 7-10, 51-52 of the article

<sup>11</sup> This is not to suggest that considering “before the border” decision-making means that U.S. temporary worker programs should be designed from the perspective of the foreign worker. “Congress should determine the size and scope of a U.S. guest worker program by balancing the needs of U.S. workers and U.S. employers. No serious economic research supports the notion of [controlling] the size or scope of a U.S. guest worker program in the interest of current or potential guest workers.” *Id.* at p. 59 of the Hearing Report. Authorized guest work (thus best avoiding exploitation) is “the economic opportunity of a lifetime.” *Id.* at p. 57 of Hearing Report.

<sup>12</sup> See, Chapter 4 in “Measuring the Metrics: Grading the Government on Immigration Enforcement” (Bipartisan Policy Council, February 2015, report by Bryan Roberts, Senior Economist at Econometrica, Inc.) [http://bipartisanpolicy.org/wp-content/uploads/2015/02/BPC\\_Immigration\\_MeasuringEnforcement.pdf](http://bipartisanpolicy.org/wp-content/uploads/2015/02/BPC_Immigration_MeasuringEnforcement.pdf), at pp. 37, 55-66.

In sum, for all these reasons, a critical addition to commonsense border reforms is a work visa program that could feasibly enable legal entry if there are circumstances when qualified U.S. workers are not available.

## B. EXISTING TEMPORARY WORKER PROGRAMS

The current ability of employers to legally hire foreign workers in temporary worker programs is quite narrow. Specifically, by law no more than 85,000 new H-1B professional workers can be granted status each year (with some non-profits and universities being exempt from these caps) and no more than 66,000 new H-2B seasonal<sup>13</sup> non-agricultural workers can be granted status each year, with the uncapped H-2A agricultural visa program resulting on average in the issuance of about 62,000 visas each year.<sup>14</sup> Especially when viewed in comparison to the 148 million workers employed across the country,<sup>15</sup> these temporary worker program numbers provide little space to be responsive to changing needs in various sectors.

What these legal nonimmigrant “H” visa programs do provide is a means for controlled and secure legal entry into the United States, with criminal background checks and national security checks for each and every legal worker on a temporary worker visa program. Individuals entering on the “H” visa temporary worker programs, like all legal immigrants entering the country, must satisfy a myriad of requirements concerning prior immigration history, name-checks, any interaction with the criminal justice system, and security risks.<sup>16</sup> And, these “H” temporary worker programs are thoroughly regulated by U.S. Citizenship and Immigration Services (USCIS) and (in some circumstances) the Department of Labor, under approximately 230 pages of the Code of

<sup>13</sup> Technically, the H-2B category can also be used for peak-load, one-time, or intermittent needs, in addition to seasonal jobs.

<sup>14</sup> See State Department’s spreadsheet for nonimmigrant visa issuance FY97-FY13, showing H-2A visa issuance the last five fiscal years to be FY13-74,192, FY12-63,345, FY11-55,384, FY10-55,921, FY09-60,112 <http://travel.state.gov/content/visas/english/law-and-policy/statistics/non-immigrant-visas.html>.

<sup>15</sup> We know from the Bureau of Labor Statistics and Census Bureau that 91.4 percent of the employed population is American citizens. We also know from the Pew Institute that 4.8 percent to 5.5 percent of employed workers are unauthorized workers. Of the remaining 2.1 percent to 3.8 percent of the employed worker population (that are not American citizens or unauthorized workers), we know that includes jobs filled by millions of Lawful Permanent Residents (“green card” holders) who are considered U.S. workers under the law. We know from the Department of Homeland Security (DHS) that there are 13 million green card holders. For estimates of the age breakdown for this group, see [https://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_lpr\\_pe\\_2011.pdf](https://www.dhs.gov/xlibrary/assets/statistics/publications/ois_lpr_pe_2011.pdf) (DHS Office of Immigration Statistics). The Current Population Survey (CPS) is the source of data comparing native-born workers to foreign-born workers. CPS is a joint project of the Bureau of Labor Statistics (BLS) and Census Bureau, with much of the data being published by BLS, and republished by the Federal Reserve Economic Data system (FRED), where excellent interactive graphs are available on the number of native-born and foreign-born workers employed 2007 to the present (<http://bit.ly/1BcZ0Kf>) and the total number of foreign-born and foreign born in the civilian workforce (<http://bit.ly/1Ch3fXp>).

<sup>16</sup> See, e.g., CRS, “Immigration: Visa Security Policies” (CRS Report R43589, June 2014). Before issuing a visa, the State Department checks, collects, and receives extensive information on each visa applicant. The State Department has the ability to check, as appropriate, the Automated Biometric Identification System (IDENT), the Integrated Automated Fingerprint Identification System (IAFIS), the Terrorist Screening Center (TSC), and the Arrival Departure Information System (ADIS), among others. The State Department also has controlled access to the Traveler Enforcement Compliance System (TECS), which is used by Customs and Border Protection to double check the admissibility of each legal visa holder, and TECS in turn provides access to the Interagency Border Inspection System (IBIS) which includes the records of the National Crime Information Center (NCIC). The State Department collects, and retains, the photos of every visa applicant (since 2001) and the 10-finger scans of the fingerprints of each visa applicant (since 2007). And, the State Department receives clearances in response to Security Advisory Opinions (SAOs) that consular officers request in a variety of circumstances. These security steps reflect dramatic improvement and expansion following September 11<sup>th</sup> (which previously focused on checking “lookouts” throughout the Consular Lookout and Support System (CLASS) and the National Automated Immigration Lookout System (NAILS), coupled with regular requests of SAOs). The most fundamental change in our current visa issuance system is that it requires resolution of all name hits in lookout systems as well as resolution of all requests for SAOs, instead of merely waiting a reasonable period of time. Notably, most SAOs require interagency cooperation in order to resolve. In general, SAO code names have been in place for decades and follow two naming conventions – clearances that “fly over” the State Department and are squarely in the domain of another agency are avian (such as Mantis – for possible risk of improper technology transfer) while clearances that the State Department must itself be involved in “walk in” to the State Department (like Donkey – for evaluation of inadmissibility for serious risk such as being from a country found to be a state sponsor of terrorism).

Federal Regulations governing employer obligations regarding “H” visa petition requests,<sup>17</sup> along with much sub-regulatory guidance issued by USCIS.<sup>18</sup> Each “H” visa program requires employers to take certain labor protection steps and make extensive filings to the government documenting the terms and conditions of employment, job duties, job requirements, qualifications of the foreign worker, employer’s ability to pay, and wages owed the foreign worker and paid similarly situated Americans, among other criteria.

Whatever the unemployment rate for the United States as a whole at any given time, the demand for specific kinds of workers in various sectors of the economy and in various locales can be high.<sup>19</sup> For instance, today there are remarkably low unemployment rates for native-born American citizens in certain jobs that do not require a college education<sup>20</sup>, such as Social and Human Service Assistants (2.9 percent unemployment), Phlebotomists (1.4 percent unemployment), Valve Repairers (3.0 percent unemployment), and Industrial Machinery Mechanics (2.8 percent unemployment).<sup>21</sup> And, currently there are very low unemployment rates for highly skilled professionals like Electrical and Electronic Engineers (1.2 percent unemployment), Financial Analysts (2.2 percent unemployment), Computer Programmers (2.4 percent unemployment), Software Developers (2.9 percent unemployment), and Accountants (3.0 percent unemployment).<sup>22</sup> These data compare to national unemployment of 5.6 percent as of January 2015.<sup>23</sup>

Immigrants are one solution to insufficient numbers of qualified and available American workers that will inevitably exist at any given time in different sectors of an economy as diverse as our country’s. Under these circumstances, the U.S. economy would benefit from channels of legal immigration that are flexible enough to respond to employer demand to hire individuals in particular occupations at a particular time and place, as long as labor protection requirements have been satisfied. Temporary worker programs, if constructed correctly, provide just the sort of flexibility that is required in many industries.<sup>24</sup>

It is safe to say that temporary worker programs under current U.S. immigration law are not constructed correctly.

First, it should be emphasized that the H-1B and H-2B visa programs are currently subject to fixed numerical limits set in 1990, while the H-2A program is uncapped but has very small annual usage because it is overly cumbersome. These 1990 numerical limits fail to recognize that demand for immigrant staff fluctuates with the condition of the U.S. economy—rising when times are good

<sup>17</sup> See, 8 CFR Part 214.2(h) and 20 CFR Part 655.

<sup>18</sup> See, e.g., <http://www.uscis.gov/laws/policy-memoranda>.

<sup>19</sup> Darrell M. West, “The Paradox of Worker Shortages at a Time of High National Unemployment” (Brookings Institution, April 2013) [http://www.brookings.edu/~media/research/files/papers/2013/04/10\\_percent20worker\\_percent20shortage\\_percent20immigration\\_percent20west/west\\_paradox\\_percent20of\\_percent20worker\\_percent20shortages.pdf#page=2](http://www.brookings.edu/~media/research/files/papers/2013/04/10_percent20worker_percent20shortage_percent20immigration_percent20west/west_paradox_percent20of_percent20worker_percent20shortages.pdf#page=2) at p.2.

<sup>20</sup> Such positions that do not require a college education have no existing temporary worker program through which legal sponsorship in a temporary worker program would be possible for a foreign worker absent a showing that the position is seasonal or a one-time, peakload, or intermittent need (which would then qualify the position for the H-2B program).

<sup>21</sup> Compiled as of January 12, 2015, from Current Population Survey, a project of the Bureau of Labor Statistics and the Census Bureau. The data set is pooled monthly CPS samples for 12 months --December 2013 through November 2014. Observations were weighted using the BLS composite monthly weight variable. Monthly weights were divided by 12, so totals are estimates of average monthly employment over the year.

<sup>22</sup> Id. For the 12 month period December 2013 through November 2014 (data compiled January 12, 2015), unemployment for Science, Technology, Engineering and Math (STEM) professional occupations ranged from 0 percent for biomedical engineers to 7.2 percent for nuclear engineers as the only STEM professional occupational group with unemployment higher than the 5.6 percent average for the period and with most STEM occupations at very low unemployment of 3 percent or below.

<sup>23</sup> Id.

<sup>24</sup> Alexander Nowrasteh, “How to Make Guestworker Visas Work” (Cato Institute, 2013)

[http://object.cato.org/sites/cato.org/files/pubs/pdf/pa719\\_1.pdf](http://object.cato.org/sites/cato.org/files/pubs/pdf/pa719_1.pdf).

and falling when they are bad. The caps, meanwhile, are held at a constant. This should change. And, adhering to a specific, never fluctuating number of temporary workers, set in 1990, as the centerpiece of our immigration policy will not position our country to gain access to the human capital our nation needs in a changing and global economy. Since 1990, the U.S. economy has expanded. Gross Domestic Product for the country is 2.8 times larger today than in 1990 (\$16.768 trillion as compared to \$5.979 trillion). The population of the United States is 1.3 times as large (316 million people now as compared to 250 million in 1990). Similarly, the Gross Domestic Product per capita has expanded 2.2 times since 1990 (GDP per person is now \$53,259 each year as compared to \$23,934 annually in 1990). Expansion of visa numbers should not be pegged to specific ratios to the size of our economy, but the growth of our economy in the last 25 years should highlight that targeted increases to visa numbers to meet economic needs should be considered.

The disconnect between our economic needs and numerical limits on temporary worker programs is perhaps most unmistakably reflected in the H-1B program for high-skilled professionals. Economists have found that foreign-born science and engineering professionals coming to the U.S. “may explain between 10 and 25 percent of the aggregate productivity growth that took place in the U.S. between 1990 and 2010,”<sup>25</sup> that for every one percent increase in H-1B numbers there is a corresponding at least seven percent increase in wages for American workers in Science, Technology, Engineering and Math (STEM) fields,<sup>26</sup> that each approved H-1B high-skilled, legal, professional worker is associated with an additional 1.83 jobs among U.S.-born workers,<sup>27</sup> and that each foreign-born worker in the U.S. with a U.S. STEM graduate degree is associated with 2.62 jobs for U.S.-born workers.<sup>28</sup>

Yet, the H-1B visa program allows up to only 85,000 cap-subject petitions to be approved annually for highly educated workers to be sponsored for work authorization, including a set-aside of 20,000 for individuals who have earned a Master’s degree, or above, at a U.S. university. In the first five business days of April 2014 all of the 85,000 H-1B visa numbers for foreign professional hires for the government’s fiscal year 2015 were assigned,<sup>29</sup> six months before the start of the fiscal year. This meant that as of April 2014 no other business could hire a single new H-1B professional until October 1, 2015 (when the government’s next fiscal year begins). The same dynamic occurred in April 2013, as well as April 2008 and April 2009, and is expected to happen in April 2015. In every year since 1997 the H-1B cap has been met prior to the end of the fiscal year – except the three-year period where the cap was set at 195,000, when H-1B numbers utilized were 163,600, 79,100, and 78,000, showing that employers filed based on market needs and that the 85,000 figure is generally too low except when the market is slumping.<sup>30</sup> And, in nine of the years since 1997, the

<sup>25</sup> See, Giovanni Peri, Kevin Shih, and Chad Sparber, “STEM Workers, H-1B Visas and Productivity in U.S. Cities,” Norface Migration Discussion Paper No. 2013-09 (Norface Research Programme on Migration, February 2013), [http://www.norface-migration.org/publ\\_uploads/NDP\\_09\\_13.pdf](http://www.norface-migration.org/publ_uploads/NDP_09_13.pdf).

<sup>26</sup> *Id.* at Table 9.

<sup>27</sup> Madeline Zavodny, “Immigration and American Jobs” (American Enterprise Institute, December 14, 2011)

[https://www.aei.org/wp-content/uploads/2011/12/-immigration-and-american-jobs\\_144002688962.pdf](https://www.aei.org/wp-content/uploads/2011/12/-immigration-and-american-jobs_144002688962.pdf) at p.11.

<sup>28</sup> *Id.* at p. 14.

<sup>29</sup> See USCIS, April 7, 2014 <http://www.uscis.gov/news/uscis-reaches-fy-2015-h-1b-cap>. There is a 65,000 cap in general plus 20,000 for individuals who have earned a U.S. graduate degree.

<sup>30</sup> Demand for the H-1B program is not driven by the cap. Instead, demand for this program is based on employer new hiring needs and inability to find qualified American workers in sufficient numbers. See, e.g., Jill H. Wilson, “Immigration Facts: Temporary Foreign Workers” (Brookings Institution, June 2013) <http://www.brookings.edu/research/reports/2013/06/18-temporary-workers-wilson>, and Stuart Anderson, “H-1B Visas Essential to Attracting and Retaining Talent in America” (National Foundation for American Policy, May 2013) [http://www.nfap.com/pdf/NFAP\\_percent20Policy\\_percent20Brief\\_percent20H-1B\\_percent20Visas\\_percent20May\\_percent202013.pdf](http://www.nfap.com/pdf/NFAP_percent20Policy_percent20Brief_percent20H-1B_percent20Visas_percent20May_percent202013.pdf), at p. 6-7.



cap was met prior to the beginning of the fiscal year, including four years when the cap was met in the first week that petitions could be filed.<sup>31</sup>

Today, the existing visa programs for lesser-skilled immigrant workers are either inadequate or non-existent, thus driving illegal immigration and unauthorized employment for three types of workers.<sup>32</sup>

#### Lesser-Skilled for Non-Agricultural Workers (H-2B Visa Program)

The H-2B category is capped at 66,000 a year and may not be used for positions to be temporarily filled by a foreign worker unless the employer can prove it has no year-round need for hiring the type of workers in question.<sup>33</sup> This cap is divided in half to allow filings in two six month periods each year and is far too low except when the United States economy is slumping, with the cap consistently being met very early.<sup>34</sup> The H-2B program is a key for many small businesses that rely on it to complement their year-round staff of Americans, since less-skilled immigrant workers tend to work in different fields than less-skilled native-born workers.<sup>35</sup> Seasonal businesses rely on the H-2B program to fill temporary vacancies in seafood harvesting and processing, horse training, hospitality and amusement parks, forestry, landscaping, golf courses, circuses, carnivals, food concessionaires, swimming pool maintenance, stone quarries, and other industries. Without access to this vital H-2B program, seasonal businesses are left without any legal mechanism to hire workers when their efforts to recruit American workers have been exhausted. The H-2B program is not just vital to the small businesses that use the H-2B program, but also is critical to their American workers, the local community, and companies that provide goods and services to these seasonal businesses. The small and seasonal businesses that rely on the H-2B program for legal workers suffer economic losses when H-2B processing becomes unavailable through low caps or agency decisions. Over the last six years, the H-2B program has been mired in ongoing litigation and debates about the role Congress envisioned for the Department of Labor and the Department of Homeland Security in developing policy to govern this important program.<sup>36</sup>

<sup>31</sup> See, summary assembled of H-1B cap dates FY92-FY15 based on USCIS data [http://immigration.uschamber.com/uploads/sites/400/U.S.C.C.\\_USCIS\\_H1B\\_petition\\_data\\_and\\_cap\\_dates\\_FY92\\_FY15.pdf](http://immigration.uschamber.com/uploads/sites/400/U.S.C.C._USCIS_H1B_petition_data_and_cap_dates_FY92_FY15.pdf).

<sup>32</sup> An employer can unknowingly hire an employee who is an unauthorized worker even while the employer fully complies with the I-9 Employment Verification requirements, due to the presentation of fraudulent documents that prove identity and work authorization.

<sup>33</sup> The H-2B category can be used for seasonal, peak-load, one-time, or intermittent but temporary jobs, but in effect the agencies administering the program require the job to be seasonal. The H-2B category serves an important purpose and needs to be continued, in addition to creation of a separate and new category for lesser-skilled workers in any industry, not just seasonal work industries.

<sup>34</sup> The H-2B cap is divided into halves (with an equal cap of 33,000 for the first six months and second six months) in order to accommodate different seasons and different seasonal businesses (for example, ski season and seafood processing season) and the cap is typically met well before the end of the six months. See, e.g., USCIS, January 26, 2015 <http://www.uscis.gov/working-united-states/temporary-workers/cap-count-h-2b-nonimmigrants> and March 14, 2014 <http://www.uscis.gov/news/uscis-reaches-h-2b-cap-first-half-fiscal-year-2014>.

<sup>35</sup> Madeline Zavodny and Tamar Jacoby, "Filling the Gap: Less-Skilled Immigration in a Changing Economy" (American Enterprise Institute and ImmigrationWorks USA, June 2013), pp. 1-3, [http://www.aei.org/files/2013/06/10/zavodny-filling-the-gap-immigration-report\\_140631709214.pdf](http://www.aei.org/files/2013/06/10/zavodny-filling-the-gap-immigration-report_140631709214.pdf).

<sup>36</sup> An excellent summary of the current difficulties in the H-2B program and the legal wrangling over the last six years is provided in the February 2, 2015 comment to the Department of Labor by the H-2B Workforce Coalition, where the U.S. Chamber sits as a member of the Steering Committee <http://uscham.com/11bgZUx>.

### Agricultural Workers (H-2A Visa Program)

In 2013, about 74,000 H-2A visas were issued authorizing legal temporary agricultural workers to enter the United States.<sup>37</sup> It is hard to know how many temporary agricultural workers are present or needed in the economy,<sup>38</sup> but demand for temporary agricultural workers far exceeds this figure. Some that have studied agriculture workforce issues estimate that about 2 million farm workers are employed each year across the country and that somewhere between 1.1 million and 1.5 million agricultural workers are unauthorized.<sup>39</sup>

Notwithstanding the lack of any numerical cap on the H-2A visa category for seasonal agriculture workers, most immigrant agricultural workers are employed without authorization due to the fact that the visa process for this category is unworkable for most employers. The dairy industry is completely excluded from the H-2A program since dairy cannot meet the current definition of either agriculture or temporary need for H-2A. The National Council of Agricultural Employers has concluded that “the H-2A program is an example of governmental regulatory abuse of small business causing economic harm to employers (farmers) seeking a legal workforce, threatening the jobs of their local year round U.S. workers and rural and urban economies.”<sup>40</sup> Without understating the difficulty of constructing the parameters of a workable agriculture visa program, it nevertheless remains clear that “the status quo – a U.S. agricultural industry almost completely dependent on unauthorized workers who have entered the U.S. illegally – is untenable. It is equally clear that [moving] U.S. production of food and fiber [abroad] is untenable.”<sup>41</sup> The U.S. will place fundamental parts of the national economy and access to food and nutrition at risk if policymakers decline to address these vital agriculture worker visa questions.<sup>42</sup>

<sup>37</sup> Department of State, Report of the Visa Office 2013, Table 16(B) – the 2014 report on nonimmigrant visas is not yet issued. <http://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2013AnnualReport/FY13AnnualReport-TableXVIB.pdf>.

<sup>38</sup> There is no definitive agreement on the number of farm workers providing services annually in the U.S. The U.S. Department of Agriculture estimates there is somewhere in the range of 1.1 or 1.2 million farm workers each year in the U.S., but this is based on a “peak employment” analysis. Peak employment, of course, is different than the total number since most farm workers are in seasonal jobs and major agriculture production areas like Florida and Arizona have employment peaks that do not overlap with the overall agricultural employment peak. Most in the agriculture industry instead estimate that there are approximately 2 million farm workers every year in our country, the consensus figure referred to by academics analyzing agriculture workforce issues. With regard to how many of these farm workers are illegal, there is further question. The National Agriculture Worker Survey (NAWS) commissioned by the U.S. Department of Labor is likely the most cited source, and it suggests that about 52 percent of all farm workers in our country are unauthorized. However, the DOL figure is often considered to understate the ratio of illegal immigrants because of the lack of willingness to provide such information by workers on a government survey. Moreover, in current ICE (Immigration and Customs Enforcement) worksite audits it is most common to see issuance of a Notice of Suspect Documents (NSD) for more than 80 percent of a farm’s workers, making the NAWS estimate suspect. Lastly, since the DOL survey has continued to show a steady ratio of about half of the workforce as undocumented for over 15 years while most experts believe the ratio of illegal immigrants has markedly increased, most agriculture workforce experts believe the actual number is 70 percent or more. Sometimes reports from Pew and the Migration Policy Institute suggest that the percentage of illegal agriculture workers is closer to one-quarter to one-third, but that is because these social science reports rely on the Current Population Survey (CPS) which has a different data collection mechanism that understates agriculture sector employment. The snapshot provided by CPS is based on a two week survey period each March. This data point is at what is the seasonal low ebb for agricultural employment, thus it is misleadingly low.

<sup>39</sup> See testimony of Professor James Holt before the House Committee on Agriculture at a Hearing to Review the Labor Needs of American Agriculture, October 4, 2007 <http://www.gpo.gov/fdsys/pkg/CHRG-110hhrg48999/pdf/CHRG-110hhrg48999.pdf>, p. 11-18.

<sup>40</sup> Survey of H-2A employers by the National Council of Agricultural Employers, 2010 [http://www.ncaonline.org/images/documents/ALRP2011\\_brochure.pdf](http://www.ncaonline.org/images/documents/ALRP2011_brochure.pdf). For a detailed explanation of the paperwork burdens, time consuming, and bureaucratic nature of the H-2A process, see the 55 page report by the Social and Economic Research Center of Washington State University “H-2A Temporary Agricultural Employee Program” (Technical Report 11-67, November 2011).

<sup>41</sup> See testimony before the House Committee on Agriculture, October 4, 2007 <http://www.gpo.gov/fdsys/pkg/CHRG-110hhrg48999/pdf/CHRG-110hhrg48999.pdf> at 18.

<sup>42</sup> See, “No Longer Home Grown: How Labor Shortages are Increasing America’s Reliance on Imported Fresh Produce and Slowing U.S. Economic Growth,” (Stephen Bronars, PhD, for the Partnership for a New American Economy, March 2014) <http://www.renewoureconomy.org/wp-content/uploads/2014/03/no-longer-home-grown.pdf>.

While the H-2A visa category for agriculture work is uncapped, it is largely unused because it imposes significant delays due to its cumbersome requirements. Nearly three-quarters of growers that use the H-2A program report that sponsored workers cannot be brought in by the date of need, with workers arriving an average of 22 days late, critical days in an industry highly dependent on the weather. Significantly, the H-2A requirements do not provide ample portability allowing workers to easily work at multiple farms.<sup>43</sup>

#### Lesser-Skilled Non-Seasonal Workers

It must be stressed that there are no numbers under U.S. immigration for certain categories of temporary workers. Current law provides for 0 (zero) lesser skilled workers to legally enter on temporary worker visas to perform in year-round positions even after an employer tests the local labor market. This reality is striking in light of the predictions by the Bureau of Labor Statistics that the highest number and percentage of job growth in the U.S. for the period 2012 to 2022 is expected in low and moderate skill jobs that cannot be mechanized or outsourced.<sup>44</sup>

Temporary workers are needed in lesser-skilled occupations that are both seasonal and year round. But the former has only a limited H-2B program beset by legal issues and an H-2A program abandoned by the vast majority of agriculture sector employers (and unavailable to the dairy industry) and the latter has no visa program. The United States can do better.

### **C. DEMOGRAPHIC TRUTHS AND WORKFORCE NEEDS**

The reason to focus on temporary worker programs for jobs that don't require a college education is brought into high relief when looking at the occupations that the Bureau of Labor Statistics predict will be fastest growing, several of which are lesser-skilled occupations<sup>45</sup> for which there is no current visa category.

Two of the four major occupational groups that are projected to grow more than 20 percent – nearly double the overall growth – are lesser-skilled occupational groups that do not require post-secondary education: construction and extraction occupations (21.4 percent), and personal care and service occupations (20.9 percent). In construction, the number of open construction sector jobs as of December 2014 (147,000) stands at post-recession highs, and the job open rate exceeds that prior to the housing boom.<sup>46</sup> Meanwhile, employment for Personal Care Aides and Home Health Aides is expected to grow by 48.8 percent and 48.5 percent, respectively, by 2022, while current unemployment for U.S.-born U.S. citizens is 2.9 percent in these human services assistant occupations, suggesting near full-employment. While growth in employment opportunities will hopefully encourage more native-born Americans to enter these occupations, historically these occupations have seen over representation of foreign-born workers.<sup>47</sup>

<sup>43</sup> See survey of H-2A employers by the National Council of Agricultural Employers, 2010 [http://www.ncaonline.org/images/documents/ALRP2011\\_brochure.pdf](http://www.ncaonline.org/images/documents/ALRP2011_brochure.pdf), and the 55 page report by the Social and Economic Research Center of Washington State University "H-2A Temporary Agricultural Employee Program" (Technical Report 11-67, November 2011).

<sup>44</sup> See <http://www.bls.gov/news.release/pdf/ecopro.pdf> and graphic from the Center for Global Development "As Americans' Skill Up For Good Jobs, There Are Jobs That People Have To Do Here," explaining the BLS data [http://immigration.uschamber.com/uploads/sites/392/Less-Skilled\\_percent20Future\\_percent20Flow\\_percent202013\\_percent20with\\_percent20demand\\_percent20graphic.pdf](http://immigration.uschamber.com/uploads/sites/392/Less-Skilled_percent20Future_percent20Flow_percent202013_percent20with_percent20demand_percent20graphic.pdf) (p.3).

<sup>45</sup> See, the employment projections for 2012-2022 by the Bureau of Labor Statistics [www.bls.gov/news.release/pdf/ecopro.pdf](http://www.bls.gov/news.release/pdf/ecopro.pdf).

<sup>46</sup> Robert Dietz, "Construction Labor Market: Quits Jump, Hiring and Job Openings Rise" (National Association of Home Builders, February 10, 2015) [http://eyeonhousing.org/2015/02/dec\\_jobs/](http://eyeonhousing.org/2015/02/dec_jobs/).

<sup>47</sup> See, c.g., "Foreign-Born Workers in Long-Term Supportive Services," by Walter Leutz (Brandeis University), published in the Spring 2012 Public Policy and Aging Report of the National Academy on an Aging Society.

Critically, Americans are becoming more educated. In 1950, more than half of the U.S.-born population had not completed high school but today the figure is less than 15 percent.<sup>48</sup> These educational trends suggest that fewer Americans will be attracted to these jobs. Lesser-skilled immigrant workers can help fill this gap.<sup>49</sup>

Moreover, the United States faces real demographic<sup>50</sup> challenges that should not be ignored in considering how to address temporary worker visa programs for the lesser-skilled occupations. First of all, our senior population is exploding. Each day an average of 10,000 people turn 65. The retiree population is expected to more than double between 2012 and 2060, from 43.1 million to 92.0 million as Baby Boomers retire. In addition, birthrates in the U.S. are trending below replacement levels. As of 2012, it was estimated that the typical woman in the U.S. during her lifetime would have 2.0 children. This rate is projected to decline to 1.91 by 2060, providing an insufficient number of new births to replace deaths. The fact is that America is – and is becoming – much older than ever before. From 2004-2014, the annual growth rate for those 55 and older was 4.1 percent, more than four times the rate of growth of the workforce. By contrast, during the same time the annual growth rate for those 25-to-54 years old was .3 percent. By 2056, for the first time in United States history the older population (age 65 and over) is projected to outnumber the young (under age 18). In 1950, each Social Security retiree's benefit was divided among 16 workers. By 2035, the ratio of workers to retired beneficiaries is projected to drop to two workers for every retiree. The number of children and elderly compared with the number of working-age Americans (the "dependency ratio") has always been replenished in our country based on immigration. Between 2005 and 2050, the ratio of children and elderly people to working age adults is projected to increase by over 22 percent.

The demographic realities are undeniable: By 2035, old-age dependency in the United States will increase by more than 70 percent.<sup>51</sup> This "population age shift is especially significant for employers as the baby boomers retire."<sup>52</sup> The aging of America is particularly critical in occupations across the economy that do not require highly-educated workers. While the highly educated may work till they are older than traditional retirement age, this trend will not cover the essential yet difficult lesser-skilled jobs that the Heritage Foundation and others recognize "as part of a modern, dynamic economy."<sup>53</sup>

<sup>48</sup> See Census Bureau <http://www.census.gov/prod/2012pubs/p20-566.pdf> (issued February 2012). Other demographers have reported that between 1990 and 2010, the number of young, U.S.-born, lesser-skilled individuals declined by almost 12.3 million. Frank Bean, "A Crucial Piece of the Puzzle," (Partnership for a New American Economy, March 27, 2014), <http://www.renewoureconomy.org/wp-content/uploads/2014/03/less-skilled-final.pdf>. See also, for a discussion of the subject generally, Madeline Zavodny and Tamar Jacoby, "Filling the Gap: Less-Skilled Immigration in a Changing Economy" (American Enterprise Institute and ImmigrationWorks USA, 2013) [http://www.aei.org/files/2013/06/10/zavodny-filling-the-gap-immigration-report\\_140631709214.pdf](http://www.aei.org/files/2013/06/10/zavodny-filling-the-gap-immigration-report_140631709214.pdf).

<sup>49</sup> See, e.g., Id. and Demetrios G. Papademetriou and Madeleine Sumption, "The Role of Immigration in Fostering Competitiveness in the United States" (Migration Policy Institute, 2011), <http://www.migrationpolicy.org/pubs/competitiveness-us.pdf>.

<sup>50</sup> Each data point on demographics comes from the Census Bureau or the Bureau of Labor Statistics.

<sup>51</sup> "Age Invaders: A generation of old people is about to change the global economy" (The Economist, April 26, 2014)

<http://www.economist.com/news/briefing/21601248-generation-old-people-about-change-global-economy-they-will-not-all-do-so>.

<sup>52</sup> "The Aging US Workforce" (Stanford Center on Longevity, July 2013) [http://longevity3.stanford.edu/wp-content/uploads/2013/09/The\\_Aging\\_US-Workforce.pdf](http://longevity3.stanford.edu/wp-content/uploads/2013/09/The_Aging_US-Workforce.pdf).

<sup>53</sup> "Advancing the Immigration Nation: Heritage's Positive Path to Immigration and Border Security Reform" (Heritage Foundation, June 2013) <http://www.heritage.org/research/reports/2013/06/advancing-the-immigration-nation-heritages-positive-path-to-immigration-and-border-security-reform>. Some have referred to many of these essential and lesser-skilled positions as "3D" jobs – positions that are either dirty, dangerous or difficult.

Indeed, at the U.S. Chamber we hear from many industries represented in our membership about the realities of workforce demands in industries with unmet hiring needs in lesser-skilled occupations, such as, among others, nursing homes, restaurants, hotels, and trucking.

#### Nursing Homes

"There are chronic shortages throughout the nursing home industry. It is difficult physically to lift, turn, transport, position, and keep up with our residents' care day and night. It is psychologically demanding to work with our Alzheimer's residents who are often confused, angry, scared, or lonely, and to make their days rewarding and productive."<sup>54</sup>

#### Restaurants

Workers under 26 make up over 40 percent of the workforce in the restaurant industry, while the number of potential workers in that age group is going down.<sup>55</sup> "As the nation's second largest private sector employer, the restaurant industry was directly impacted by these shifting labor demographics in recent years."<sup>56</sup>

#### Hotels

"Since Grand Hotel first opened in 1887, it has been a continuing challenge to find a stable, dependable work force to fill the 620 jobs required to maintain the high level of service for which we are known. The fact we are open only six months, our isolated location 300 miles north of Detroit, and other factors make it difficult to develop" a work force of solely American workers, despite extraordinary efforts to do so.<sup>57</sup>

#### Trucking

"The aging truck driver workforce poses a problem since the "baby boomers" will retire and there will be a need to find workers to replace them. This will further exacerbate the current shortage," which is important since about 28 percent of all native-born truck drivers are over age 54. With 70 percent of all freight tonnage within the U.S. transported by truck, "immigrant truck-drivers are [a] group of low-skilled immigrant workers whose positive economic contributions have been overlooked."<sup>58</sup>

<sup>54</sup> Testimony of the CEO of Medialodges, Inc. before the House Committee on Education and the Workforce in a March 14, 2013 hearing about lesser-skilled guestworkers [http://edworkforce.house.gov/uploadedfiles/benjamin\\_-\\_testimony.pdf](http://edworkforce.house.gov/uploadedfiles/benjamin_-_testimony.pdf).

<sup>55</sup> See "Forecast 2015," National Restaurant Association (Section 2 on Workforce Outlook and Trends).

<sup>56</sup> "Restaurant Demographics are Shifting," (National Restaurant Association, March 17, 2015) <http://www.restaurant.org/News-Research/News/Restaurant-workforce-demographics-are-shifting>.

<sup>57</sup> Testimony of President of Grand Hotel before the House Committee on Education and the Workforce in a March 14, 2013 hearing about lesser-skilled guestworkers [http://edworkforce.house.gov/uploadedfiles/musser\\_testimony\\_etc.pdf](http://edworkforce.house.gov/uploadedfiles/musser_testimony_etc.pdf).

<sup>58</sup> "Who's Behind the Wheel? Filling the Seat for Truck Drivers in the United States" (George Mason University Institute for Immigration Research, January 2015) <http://www.immigrationresearch-info.org/report/other/whos-behind-wheel-immigrants-filling-labor-shortage-us-trucking-industry>.

#### D. IMPROVING WAGES, JOBS, AND ECONOMIC GROWTH FOR AMERICAN WORKERS

Certainly U.S. immigration law governing lesser-skilled visa programs needs to continue sufficient domestic labor protections, a predicate of current law. The U.S. Chamber has vocally supported reforms in the past that validate American workers are not being displaced, ensure wages paid to foreign-born workers are the greater of actual internal wages paid to an employer's similar American workers or prevailing wages in the area of employment for similar workers, and demonstrate that proper recruitment practices are in place. What the U.S. Chamber will not support are broad-brush changes in the name of "reform" that make the immigration system impossible to use by employers engaging in regular and ongoing recruitment of American workers but who still cannot find the employees necessary to operate.

When lesser-skilled immigrants help fill jobs that are being left unfilled, this does not harm Americans. Instead, this helps create jobs for Americans, helps those industries grow, and ultimately helps expand the national economy and wages. As economists have explained:

"Migrants are paid their marginal product (as is any worker), meaning that much if not most of their value added to production directly benefits the native population. If you believe that a growing economy leads to faster real wage growth due to increased productivity – a standard free-market principle established by Adam Smith's 1776 *Wealth of Nations* – then it is natural to predict a general equilibrium *increase* in the wage level because of immigration."<sup>59</sup>

After careful analysis of economic and statistical factors, research and reporting almost universally finds that immigration improves employment gains in the United States in a variety of ways including immigrant contributions to neighborhood revitalization and state and local economic growth.<sup>60</sup> In fact, economic studies overwhelmingly find that immigration promotes economic growth and creates jobs for Americans, including lesser-skilled immigration of the type being discussed at today's hearing:

- The American Enterprise Institute concluded that "policymakers could create jobs by making available more temporary visas for both skilled and less-skilled workers" – finding that the admission to the United States of each middle- and less-skilled, legal,

<sup>59</sup> Tim Kane, Hoover Institution, "The Economic Effect of Immigration" (February 17, 2015) <http://www.hoover.org/research/economic-effect-immigration>.

<sup>60</sup> For example: Neighborhood Revitalization – Immigration promotes neighborhood businesses around the country, as evidenced by the fact that immigrants account for 28 percent of the nation's Main Street businesses, as described by in "Bringing Vitality to Main Street: How Immigrant Small Businesses Help Local Economies Grow" (Fiscal Policy Institute and Americas Society/Council of The Americas, by David Dyssegaard Kallick, January 2015) <http://fiscalpolicy.org/wp-content/uploads/2015/01/Bringing-Vitality-to-Main-Street.pdf>. State and Local Economies – There are many state-level reports on the positive impact of immigration on state economies, such as "Immigrant Contributions to Minnesota's Economy" (Minnesota Business Immigration Coalition, Americas Society/Council of the Americas, and the Partnership for a New American Economy, October 2014) <http://www.renewoureconomy.org/wp-content/uploads/2014/11/MN-Final-Brief.pdf>, and similarly many reports on the local positive impacts of immigration, such as an analysis of the positive impact of foreign STEM workers on the average American worker, by Giovanni Peri, Kevin Shih, and Chad Sparber in "Closing Economic Windows: How H-1B Denials Cost U.S.-Born Tech Workers Jobs and Wages During the Great Recession" (Partnership for a New American Economy, June 2014) [http://www.renewoureconomy.org/wp-content/uploads/2014/06/pnac\\_h1b.pdf](http://www.renewoureconomy.org/wp-content/uploads/2014/06/pnac_h1b.pdf). For an excellent bibliography on the economic impacts of immigration in the United States, with over 60 references covering all viewpoints (left, right, business, union, immigration restrictionist, and free market) as well as government data from the Bureau of Labor Statistics and other agencies and a summary review of how immigration benefits all Americans look at a Manhattan Institute issue brief issued in December 2014 from its E21 project (Economic Policies for the 21<sup>st</sup> Century), which also rebuts the flawed analytical approach of the Center for Immigration Studies (at p. 6-8) [http://www.manhattan-institute.org/pdf/e21\\_02.pdf](http://www.manhattan-institute.org/pdf/e21_02.pdf)

non-agricultural temporary foreign worker (of the type that currently enter in the H-2B program) is associated with an additional 4.64 jobs for U.S.-born workers.<sup>61</sup>

- Other economists have used U.S. Applied General Equilibrium (USAGE) modeling, to examine job creation resulting from immigration. “With increases in low-skilled immigration, the U.S. economy would expand, creating more jobs in higher-skilled areas,” concluded the CATO Institute. CATO found that, over time, increases in immigration would foster the ability of some workers now in low-paying jobs to move up the occupational ladder into different and sometimes newly created jobs.<sup>62</sup>
- In agriculture, an industry unable to fill its labor force needs without immigrants, the U.S. Department of Agriculture has stated that each farm worker creates 3.1 upstream jobs for Americans in packaging, shipping, marketing, and insurance for agriculture products.<sup>63</sup>
- Economists also estimate that if lesser-skilled visa programs for non-agricultural workers were expanded or new programs created (in the case of non-seasonal, non-agricultural work), these changes would facilitate a nationwide increase in employment of .15 percent or a net increase of 365,000 jobs. Using the same modeling, the Gross Domestic Product is estimated to expand by \$33 billion above the baseline economic forecast.<sup>64</sup>

Economists have presumed they would find a sizeable negative effect of immigration on wages and employment of less-educated Americans working in occupations that do not require university education, but the data do not support this finding. For example, Gerald D. Jaynes, professor of Economics and African American Studies at Yale, launched a large-scale statistical analysis on this very subject but never found the expected results. According to Dr. Jaynes, “Despite strong convictions for our hypothesis that immigration had large negative effects ... the data forced us to conclude otherwise: negative effects were mostly absent and modest at worst for only a small segment of lowest skilled workers.”<sup>65</sup>

Another study is particularly instructive on testing the impact of immigration on lesser-educated native workers. When 125,000 Cubans arrived in South Florida within a six-month time frame following the 1980 Mariel Boatlift, it was widely assumed that newly-arrived Cuban immigrants, most of whom lacked college degrees, would take jobs away from Americans without post-secondary degrees. About half of the “Marielitos” settled permanently in the Miami area, joining an already-sizable Cuban community and immediately boosting the city’s labor force by about 7 percent. In 1989, economist David Card from the University of California at Berkeley

<sup>61</sup> Madeline Zavodny, “Immigration and American Jobs” (American Enterprise Institute, December 14, 2011) [https://www.aei.org/wp-content/uploads/2011/12/immigration-and-american-jobs\\_144002688962.pdf](https://www.aei.org/wp-content/uploads/2011/12/immigration-and-american-jobs_144002688962.pdf) at p.11.

<sup>62</sup> Peter B. Dixon and Maureen T. Rimmer, “Restriction or Legalization? Measuring The Economic Benefits of Immigration Reform” (Cato Institute, April 13, 2009) <http://www.cato.org/pubs/tpa/tpa-040.pdf>.

<sup>63</sup> See, e.g., Hearing to Review the Labor Needs of American Agriculture, before the House Committee on Agriculture, October 4, 2007. <http://www.gpo.gov/fdsys/pkg/CHRG-110hhrg48999/html/CHRG-110hhrg48999.htm>.

<sup>64</sup> Frederick R. Trezz, Corey Stottlemeyer, and Rod Motamedi, “Key Components of Immigration Reform: An Analysis of the Economic Effects” (Regional Economic Models, Inc., July 2013) <http://www.remi.com/immigration-report>.

<sup>65</sup> Gerald D. Jaynes, A Conversation about the Economic Effects of Immigration on African Americans, Immigration Policy Center (July 2009). [http://www.immigrationpolicy.org/sites/default/files/docs/Gerald percent20Jaynes percent20071409.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/Gerald%20Jaynes%20071409.pdf). Dr. Jaynes has also noted that results of competition between less-educated native-born workers and foreign-born workers are difficult to measure because such analysis “is swamped by a constellation of other factors (such as declining factory jobs and other blue-collar employment)”

completed a detailed analysis on the impact of this 1980 influx of largely lesser-skilled and less-educated immigrant workers on the Miami labor market as compared to other comparison cities.<sup>66</sup> Card documented that the wages of lesser-skilled and less-educated workers in Miami actually fared better than in the control cities.<sup>67</sup> In 1981, the year after the boatlift, wages among lesser-skilled workers in Miami were slightly higher than they were in 1979.<sup>68</sup>

Interestingly, cities experiencing the highest levels of immigration tend to have relatively low or average unemployment rates for those Americans without a college education. A 2012 analysis of census data by economist Jack Strauss, now of the University of Denver, found that cities with greater immigration from Latin America experience lower unemployment rates, lower poverty rates, and higher wages among the least educated Americans. In particular, the municipal-level research showed that lesser-educated Latino immigrants and lesser-educated Black Americans fill complementary roles in the labor market—they are not simply substitutes for one another.<sup>69</sup> Economists have found the same effect at the state and national levels, concluding that “national and even state economies are much more dynamic than simple theory; it thus seems that immigration tends to complement native skill levels.”<sup>70</sup>

As the Hoover Institution has explained, the bottom line is that “when immigration reform is done right, it will use the fact-based reality that immigrants of all skill levels are good for the native economy, including wages, jobs, and economic growth.”<sup>71</sup>

## E. EDUCATION AND TRAINING FOR AMERICANS

In developing policies to ensure jobs in the U.S. economy are filled there is agreement that first and foremost the United States must utilize domestic labor sources. The U.S. Chamber, and our member companies and associations, are strongly committed to dedicating resources toward just that. Improving education and training so that American workers are prepared for the jobs that need to be filled is a top priority of the business community.<sup>72</sup>

Many member companies and associations of the Chamber have their own education and training programs in order to address skill gaps on their own. And, the U.S. Chamber of Commerce Foundation has its own educational arm, the Center for Education and Workforce, which promotes the rigorous educational standards and effective job training systems needed to preserve the strength of America's greatest economic resource, our workforce.

The Chamber Foundation's Center for Education and Workforce has released reports addressing what kind of business involvement it would take to truly make a difference in K-12 schooling. For example, *Partnership is a Two-Way Street: What it Takes for Business to Help*

<sup>66</sup> David Card, “The Impact of the Mariel Boatlift on the Miami Labor Market,” National Bureau of Economic Research (Aug. 1989) at 2.7.

<sup>67</sup> *Id.* at 10-11, 13-15.

<sup>68</sup> *Id.* at 10-11, 13-15.

<sup>69</sup> Jack Strauss, Miller Chair of Applied Economics, University of Denver, *Does Immigration, Particularly Increases in Latinos, Affect African American Wages, Unemployment and Incarceration Rates?* (Social Science Research Network, December 8, 2012), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2186978](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2186978).

<sup>70</sup> Tim Kane, Hoover Institution, “The Economic Effect of Immigration” (February 17, 2015)

<http://www.hoover.org/research/economic-effect-immigration>.

<sup>71</sup> *Id.*

<sup>72</sup> For example, the U.S. Chamber Foundation's Center for Education and Workforce does extensive work on getting more businesses, training and education providers, and students to interface and coordinate on “work-based learning,” and has developed checklists on the subject for employers, educational institutions, and potential workers receiving such training [http://www.uschamberfoundation.org/sites/default/files/media-uploads/checklists\\_FINAL.pdf](http://www.uschamberfoundation.org/sites/default/files/media-uploads/checklists_FINAL.pdf).



*Drive School Reform*,<sup>73</sup> *Business Education Partnership*,<sup>74</sup> and *Breaking Through: A Guide for Business Engagement in Education*<sup>75</sup> explain and analyze how business can function as a critical customer, a partner, or a policy advocate in primary and secondary education. These reports, using examples in Texas, Tennessee, Massachusetts, and Oklahoma, among others, show how the Center fosters businesses adopting important roles to step up to make a big difference in K-12 schooling. In each case, business leaders talked seriously and bluntly with educators. They recruited respected experts to lead the reform efforts. They built sustainable structures, brought top-level executives to the table, and stayed engaged. They tackled tough questions, understood that some steps would be political and unpopular, and took the heat when there was pushback. Many of these initiatives relate to so-called “work-based learning” and occupations that do not require a university degree.

Among its other ongoing work, the Chamber Foundation’s Center for Education and Workforce conducts regional training for local and state chamber and business leaders to create a leadership network in as many states as possible focused on the role business can play in improving education and workforce training. Also, the Center for Education and Workforce conducts an ongoing assessment of K-12 education in all 50 states and the District of Columbia through its annual *Leaders and Laggards*<sup>76</sup> report.

Recently, in response to a growing skills gap that threatens the ability of companies to grow and compete in today’s economy, the Center for Education and Workforce released its *Managing the Talent Pipeline: A New Approach to Closing the Skills Gap*<sup>77</sup> report. Through this latest initiative, the Center is engaging employers and their partners across the country in developing a demand-driven approach to employer-led education and workforce partnerships. By extending lessons learned from innovations in supply chain management, this initiative calls for employers to play a new and expanded leadership role as “end-customers” of their education and workforce partnerships. From there, employers can proactively organize and manage talent supply chain partnerships with measures and incentives tied to performance. Benefits for employers include a reduced skills gap and a better prepared workforce as well as higher returns on education and workforce investments for policymakers. Over the next year, the Center will organize a network of leading practitioners and change agents that seek to accelerate talent supply chain practices in their communities all across America.

Another focus of the Center for Education and Workforce is higher education, recognizing that the U.S. higher education system and post-secondary education system generally has long been one of the country’s crown jewels and that with the right leadership and policy choices, it will remain so. For example, in *Transforming Higher Education through Greater Innovation and Smarter Regulation*,<sup>78</sup> the Center looks at how academic programs and institutions must be transformed to serve the changing educational needs of a knowledge economy. Increasing international competition, a decline in government funding, changing demographics, and an increasingly mobile population are just some of the factors threatening the status quo. If innovation in post-secondary and higher education is discouraged through funding that fails to reward quality

<sup>73</sup> <http://bit.ly/1AsFOjG> (June 2011).

<sup>74</sup> [http://www.uschamberfoundation.org/sites/default/files/publication/cdu/Business\\_percent20Education\\_percent20Partnership.pdf](http://www.uschamberfoundation.org/sites/default/files/publication/cdu/Business_percent20Education_percent20Partnership.pdf) (April 2013).

<sup>75</sup> <http://www.uschamberfoundation.org/publication/breaking-through-guide-business-engagement-education> (January 2014).

<sup>76</sup> [http://www.uschamberfoundation.org/sites/default/files/Leaders\\_percent20percent26\\_percent20Laggards\\_percent202014.pdf](http://www.uschamberfoundation.org/sites/default/files/Leaders_percent20percent26_percent20Laggards_percent202014.pdf) (September 2014).

<sup>77</sup> [http://www.uschamberfoundation.org/sites/default/files/Managing\\_percent20the\\_percent20Talent\\_percent20Pipeline.pdf](http://www.uschamberfoundation.org/sites/default/files/Managing_percent20the_percent20Talent_percent20Pipeline.pdf) (November 2014).

<sup>78</sup> <http://bit.ly/18PYad9> (May 2011).

and outcomes, or simply thwarted by complacency within traditional institutions, then the U.S. might lose its edge to faster moving international competitors.

## CONCLUSION

Expanding temporary worker programs for lesser-skilled occupations, when properly structured, will be good for the economy and will clearly enhance U.S. security and border control.<sup>79</sup>

As this Committee is undoubtedly aware, the U.S. Chamber joins those answering a resounding “yes” when asked “is immigration good for America?”<sup>80</sup> As conservative, pro-growth economists have said “immigration reform is a great economic policy opportunity.”<sup>81</sup> The U.S. Chamber stands ready to work with Members of Congress on both sides of the aisle that likewise believe moving forward with responsible reforms to our immigration system is an opportunity to improve the U.S. economy and U.S. national security.

Thank you for permitting the U.S. Chamber to share its views.

<sup>79</sup> Undoubtedly, it is important that there be a clear mechanism to ensure that legal temporary workers depart the U.S. and return to their country of origin at the end of their authorized stay. Phasing-in mandatory use of E-Verify would help in this regard. The U.S. Chamber recently testified before Congress regarding the terms and conditions that would make such an E-Verify mandate workable for employers [http://judiciary.house.gov/\\_cache/files/d2991fa6-c7ce-4f2e-acb2-3227b3dc295e/uscc-testimony-of-r-johnson-on-legal-workforce-act-2-4-2015.pdf](http://judiciary.house.gov/_cache/files/d2991fa6-c7ce-4f2e-acb2-3227b3dc295e/uscc-testimony-of-r-johnson-on-legal-workforce-act-2-4-2015.pdf). While it imposes serious penalties for employers, the Chamber supports the Legal Workforce Act (H.R.1147 in the 114<sup>th</sup> Congress) as a reasonable means to balance the competing interests in this area.

<sup>80</sup> See, e.g., compendium of articles in “Is Immigration Good for America?” (Cato Institute report, February 2012) <http://www.cato.org/cato-journal/winter-2012>.

<sup>81</sup> Former CBO Director Douglas Holtz-Eakin, quoted in The Atlantic (March 6, 2015) <http://theatlantic.com/1wecfmg>.



Testimony of

Marc R. Rosenblum  
Deputy Director, U.S. Immigration Program  
Migration Policy Institute

*Securing the Border: Defining the Current Population Living in the Shadows  
and Addressing Future Flows*

Before

U.S. Senate Committee on Homeland Security and Governmental Affairs

March 26, 2015

Chairman Johnson, Ranking Member Carper, Members of the Committee,

Good morning. My name is Marc Rosenblum, and I am deputy director of the U.S. immigration program at the Migration Policy Institute, an independent, non-partisan think tank in Washington, DC that analyzes U.S. and international migration trends and policies. Thank you for the opportunity to testify today.

The United States is currently home to about 11.2 million unauthorized immigrants.<sup>1</sup> My statement analyzes this population, explaining: 1) why the United States has such a large unauthorized population, 2) what we know about the characteristics of unauthorized immigrants in the United States and 3) potential strategies to divert unauthorized immigrants into legal channels.

### **Understanding Illegal Immigration to the United States**

With 11.2 million unauthorized immigrants in 2012, the United States is believed to have the largest unauthorized population of any country in the world. If all unauthorized immigrants in the United States lived in the same state, they would constitute the 8<sup>th</sup> largest state, slightly behind Ohio, with 11.6 million people, and well ahead of Georgia, with 10.1 million. If U.S. unauthorized immigrants lived in their own country, they would be the 78<sup>th</sup> largest country in the world, in between Cuba and Greece, and larger than 118 sovereign members of the United Nations.

In light of these numbers, it's easy to forget that large-scale illegal migration is a relatively new phenomenon for the United States. Historically, the United States did not experience significant illegal migration during earlier waves of large-scale immigration because immigrants were screened against qualitative restrictions (e.g. health, national origin), but not numerical ceilings, which were not included in earlier immigration law. As a result, the overall numbers of immigrants reflected job opportunities in the country. Thus, the U.S. unauthorized population stood at

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<sup>1</sup> Three organizations publish regular, credible estimates of the size of the U.S. unauthorized population: the Pew Research Center, the Center for Migration Studies of New York (CMS) and the Department of Homeland Security (DHS). Pew's latest estimate, based on 2012 data, is that there are 11.2 million unauthorized immigrants in the United States; see Pew Research Center, "Unauthorized Immigrant Population Trends for States, Birth Countries, and Regions," December 11, 2014, [www.pewhispanic.org/2014/12/11/unauthorized-trends/](http://www.pewhispanic.org/2014/12/11/unauthorized-trends/). The latest CMS estimate, based on 2013 data, is 11.0 million unauthorized immigrants; see CMS, "Estimates of the Unauthorized Population for States," accessed March 23, 2015, <http://data.cmsny.org/>. And the latest DHS estimate, based on 2012 data, is 11.4 million; see Bryan Baker and Nancy Rytina, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012* (Washington, DC: DHS Office of Immigration Statistics, 2013), [www.dhs.gov/sites/default/files/publications/ois\\_ill\\_pe\\_2012\\_2.pdf](http://www.dhs.gov/sites/default/files/publications/ois_ill_pe_2012_2.pdf).

between 1 million and 2 million in 1970, and most unauthorized immigrants were seasonal agricultural workers who returned home on a regular basis. Their numbers grew to about 3 million in 1980, 3.5 million in 1990 (despite the legalization of an estimated 2.7 million people following the 1986 Immigration Reform and Control Act), 8.5 million in 2000, and to an all-time high of 12.2 – 12.4 million in 2007.<sup>2</sup>

Why is the United States home to so many unauthorized immigrants today? Ultimately, the answer depends on a complex system of “push” factors in countries around the world, “pull” factors in the United States and social networks connecting immigrants to U.S. communities. People migrate to improve their “opportunity differentials”: to boost their earning power, to earn seed money to start a new business or build a home, to be reunited with family members living abroad. Others migrate to escape violence or other adverse circumstances at home. The costs and benefits of any particular immigration stream evolve over time, as previous migrants generally make it easier for those that follow.

But illegal immigration also reflects policy choices for three reasons. First, while migration flows mainly reflect these underlying drivers, immigrants’ legal status depends on how these drivers align with existing laws and policies. *Illegal immigration occurs only when more, or different, people migrate than the law permits.* Many people want to enter the United States and the supply and demand of visas will never be perfectly aligned; so a second reason policy matters is that *effective migration control policies can limit or prevent illegal immigration* even when visas are scarce. But a third reason policy matters is that *poorly considered policies and policies that are too inconsistent with market conditions may actually exacerbate illegal migration* and its effects, a pattern we have observed in the United States.

This framework—drivers of migration, supply and demand of visas and potential unintended consequences of migration control policies—explains much of the increase in illegal immigration to the United States since the 1970s.

***Drivers of Unauthorized Immigration:*** *Illegal migration increased after the 1970s due to strong employment demand in the United States and large labor supply in Mexico and other migrant-sending states.*

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<sup>2</sup> Estimates for 1970-1980 from Arthur F. Corwin, “The Numbers Game: Estimates of Illegal Aliens in the United States, 1970-1981,” *Law and Contemporary Problems* 45 (1983): 241-3; estimates for 1990-2007 from Ruth Ellen Wasem, *Unauthorized Aliens Residing in the United States: Estimates Since 1986*, Report RL33874 (Washington, DC: Congressional Research Service, 2012), 3, <http://fpc.state.gov/documents/organization/202461.pdf>

What are the drivers that have caused unauthorized immigrants to enter the United States? The most important answers to this question are economic and demographic complementarities between the United States and Mexico, as well as other major source countries of U.S. unauthorized populations. The United States has undergone a broad economic transformation since the 1970s, shifting from an industrialized, unionized, relatively high-wage blue-collar workforce to a lower-skilled, predominantly service economy. Under pressure from international trade, and as union membership has declined, real wages for lower-skilled workers in the United States have been flat or falling, even as the education levels, expectations and ages of native-born workers have risen. For example, between 1979 and 2013, productivity in the United States grew by 65 percent while hourly compensation of production and non-supervisory workers—80 percent of the private-sector workforce—increased just 8 percent.<sup>3</sup> The result has been that demand for relatively low-skilled, low-wage workers has outpaced the supply of native workers employed in such jobs.

These changes occurred as Mexico (and other sending states) had large labor surpluses fueled by high birth rates in the 1960s and '70s. While U.S. and Mexican birth rates both boomed after World War II, Mexico's remained between five and six births per woman well into the 1970s compared to a U.S. rate of about two by that time.<sup>4</sup> (Mexico's fertility rate now stands at 2.2 births per woman, down from 7.3 in 1960, and approaching the U.S. rate of 1.8; this is one factor that has contributed to a significant reduction in Mexican migration to the United States in recent years.<sup>5</sup>) After robust economic growth in the 1950s and '60s, Mexico's large labor cohort in the 1970s-1990s entered a highly volatile labor market wracked by currency devaluations and with poor employment opportunities—arguably exacerbated by the North American Free Trade Agreement. As a result, many new entrants to the labor force (those over 16 years old) found their best employment prospects abroad. For example, one analysis finds that a 10 percent reduction in Mexican real wages in 1976-1995 was

<sup>3</sup> Elise Gould, *Why America's Workers Need Faster Wage Growth—And What We Can Do About It* (Washington, DC: Economic Policy Institute, 2014), [www.epi.org/publication/why-americas-workers-need-faster-wage-growth/](http://www.epi.org/publication/why-americas-workers-need-faster-wage-growth/).

<sup>4</sup> Gordon Hanson and Craig McIntosh, "The Great Mexican Migration" (NBER Working Paper 13675, National Bureau of Economic Research, Cambridge, MA, December 2007), [www.nber.org/papers/w13675](http://www.nber.org/papers/w13675). Hanson and McIntosh find that Mexican state-level variation in the labor supply (i.e., birthrates from 15 years prior) explains 40 percent of the variation in Mexican emigration in the 1980s and '90s.

<sup>5</sup> See Aaron Terrazas, Demetrios G. Papademetriou and Marc R. Rosenblum, *Evaluating Demographic and Human-Capital Trends in Mexico and Central America and Their Implications for Regional Migration* (Washington, DC: Migration Policy Institute, 2011), [www.migrationpolicy.org/research/RMSG-demographic-human-capital-trends-mexico-central-america](http://www.migrationpolicy.org/research/RMSG-demographic-human-capital-trends-mexico-central-america); the World Bank, "Fertility rate, total (births per woman)," accessed March 23, 2015, [http://data.worldbank.org/indicator/SP.DYN.TFRT.IN?page=6&order=wbapi\\_data\\_value\\_2012%20wbapi\\_data\\_value%20wbapi\\_data\\_value-last&sort=asc](http://data.worldbank.org/indicator/SP.DYN.TFRT.IN?page=6&order=wbapi_data_value_2012%20wbapi_data_value%20wbapi_data_value-last&sort=asc).

associated with an 8 percent increase in apprehensions at the U.S.-Mexico border, suggesting a similar increase in illegal outflows.<sup>6</sup>

By the 1990s, the combination of worsening wages and working conditions in the United States and rising Mexican inflows caused migration to become a structurally embedded feature of many U.S. labor markets, meaning both workers and employers came to view certain positions as “immigrant jobs” for which younger U.S. workers were no longer available.<sup>7</sup>

***Alignment between Migration Drivers and U.S. Immigration Policy:*** *Since 1965, U.S. immigration policies have imposed strict limits on low-skilled immigration from the Western Hemisphere.*

U.S. immigration policies were a poor match for these strong migration push and pull factors during this period. In particular, increased migration demand beginning in the 1970s coincided with a pair of legislative developments in 1964–1965 that closed the door to most legal migration from Mexico. In 1964 Congress allowed the U.S.-Mexico Bracero program to expire, eliminating a system that had previously admitted up to 450,000 Mexican seasonal agricultural workers per year dating to the World War II years; and in 1965 Congress amended the Immigration and Nationality Act (INA), imposing the first numerical limits on permanent visas for Mexican (and other Western Hemisphere) immigrants.

The 1965 amendments to the INA also created a global problem of unmet demand for visas because the law set out categorical reasons people may migrate to the United States to join family members here, but it combined these rules with numerical limits that are far below the number of people in these categories. Congress failed to anticipate the degree of this imbalance, which is why 4.3 million relatives of U.S. citizens and lawful permanent residents are currently facing long wait times—some of up to 25 years—to receive a visa to join their U.S. families.<sup>8</sup>

<sup>6</sup> Gordon Hanson and Antonio Spilimbergo, “Illegal Immigration, Border Enforcement, and Relative Wages: Evidence from Apprehensions at the U.S.-Mexico Border” (NBER Working Paper 5592, National Bureau of Economic Research, Cambridge, MA, May 1996), [www.nber.org/papers/w5592](http://www.nber.org/papers/w5592).

<sup>7</sup> Wayne A. Cornelius, “The Structural Embeddedness of Demand for Mexican Immigrant Labor: New Evidence from California,” in *Crossings: Mexican Immigration in Interdisciplinary Perspective*, ed. Marcelo Suárez-Orozco (Cambridge, MA: Harvard University Press/David Rockefeller Center for Latin American Studies, 1998), 115–55.

<sup>8</sup> U.S. Department of State, “Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center as of November 1, 2014” (Washington, DC: State Department, 2014), <http://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingListItem.pdf>.

This combination of growing migration push factors in Mexico, growing employment and family-based pull factors in the United States and strict limits on visa allocations created the conditions for increased illegal migration beginning in the 1970s. This mismatch was amplified over the next three decades as migrant families, employers and social networks became increasingly entrenched and far reaching.

***Ineffective U.S. Immigration Control Policies:*** *The United States was slow to respond to rising illegal immigration, and policies implemented in the 1980s and '90s were mostly ineffective.*

Congress recognized the roots of today's immigration problems almost immediately, and held its first hearings on illegal immigration across the Southwest border in 1971—just three years after the 1965 amendments to the INA were fully implemented. But it took another 15 years for Congress to pass the first law designed to counteract these dynamics—the Immigration Reform and Control Act (IRCA) of 1986. And the enforcement system created largely as a result of the IRCA proved mostly ineffective until the early 2000s.

The U.S. immigration control system during the 1980s and '90s consisted of three main pillars. First, with passage of IRCA, Congress made it illegal for employers to knowingly hire unauthorized workers—an effort to combat the employment “magnet” that is such an important driver of illegal immigration. IRCA's employer sanctions system has failed to reduce unauthorized employment, however, because its employment verification system has been vulnerable to document fraud and employment outsourcing (i.e., the use of subcontractors or misclassification of employees as independent contractors), and because worksite enforcement has been a low priority for DHS and its predecessor, the Immigration and Naturalization Service (INS).<sup>9</sup> For instance, between 1999 and 2012, on average just 155 employers per year were fined for non-compliance with IRCA's verification requirements.<sup>10</sup> By a very rough estimate, this puts the probability that an employer who hires an unauthorized worker will be fined at about 1 in 10,000.<sup>11</sup>

Second, also beginning with the passage of IRCA, Congress and successive presidents have made major investments in border security, focusing on the U.S.-Mexico border. The Border Patrol quadrupled in size between 1980 and 2001 (from 2,268 agents to

<sup>9</sup> Muzaffar Chishti and Charles Kamasaki, *IRCA in Retrospect: Guideposts for Today's Immigration Reform* (Washington, DC: Migration Policy Institute, 2014), [www.migrationpolicy.org/research/irca-retrospect-immigration-reform](http://www.migrationpolicy.org/research/irca-retrospect-immigration-reform).

<sup>10</sup> Andorra Bruno, *Immigration-Related Worksite Enforcement: Performance Measures*, CRS Report R40002 (Washington, DC: Congressional Research Service, 2013), <http://fas.org/sgp/crs/homesec/R40002.pdf>.

<sup>11</sup> This figure is based on the estimated number of unauthorized workers midway through this period, about 8 million workers, and a conservative assumption that therefore about 2 million employers would have hired an unauthorized worker in a typical year.



9,821 agents), and then more than doubled again in the years after the 9/11 attacks (to 20,863 in fiscal year 2014).<sup>12</sup> Spending on border enforcement activities increased from \$800 million in 1980 to \$5.7 billion in 2001 and \$12.4 billion in 2014.<sup>13</sup>

Third, with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Congress increased penalties for unauthorized immigrants, primarily by making it easier for the government to formally deport them (i.e., via removal proceedings rather than informal returns), a process that makes immigrants ineligible to return to the United States and subject to criminal penalties upon a future apprehension. IIRIRA strengthened judicial removal proceedings, created new categories of immigrants subject to mandatory removal and gave INS (now DHS) greater ability to remove immigrants through administrative proceedings, without an immigration hearing.<sup>14</sup>

Yet while the United States invested considerable resources in immigration enforcement, experts on immigration flows concluded that enforcement had almost no deterrent effect during the 1980s and '90s. Increased border enforcement raised the costs and risks of crossing the U.S.-Mexico border without inspection. For example, a growing proportion of unauthorized immigrants have come to rely on professional smugglers to get across the border—about 95 percent of border crossers in 2012, up from about 70 percent in 1980—and the fees charged by smugglers increased steadily from about \$600 to about \$2,800 (in constant 2013 dollars).<sup>15</sup> But

<sup>12</sup> Lisa Seghetti, *Border Security: Immigration Enforcement between Ports of Entry*, CRS Report R42138 (Washington, DC: Congressional Research Service, 2014), <http://fas.org/sgp/crs/homsec/R42138.pdf>.

<sup>13</sup> Border enforcement spending includes spending by the Immigration and Naturalization Service (INS) for 1980-2001, and by U.S. Customs and Border Protection (CBP) for 2002-2014; see Office of Management and Budget (OMB), *Budget of the United States Government*, fiscal years 1982-2002 (Washington, DC: U.S. Government Printing Office, various years),

[www.gpo.gov/fdsys/browse/collectionGPO.action?collectionCode=BUDGET](http://www.gpo.gov/fdsys/browse/collectionGPO.action?collectionCode=BUDGET); DHS, *Budget in Brief*, fiscal years 2004-2015 (Washington, DC: DHS, various years), [www.dhs.gov/dhs-budget](http://www.dhs.gov/dhs-budget).

<sup>14</sup> For a fuller discussion, see Marc R. Rosenblum and Doris Meissner with Claire Bergeron and Faye Hipsman, *The Deportation Dilemma: Reconciling Tough and Humane Enforcement* (Washington, DC: Migration Policy Institute, 2014), [www.migrationpolicy.org/research/deportation-dilemma-reconciling-tough-humane-enforcement](http://www.migrationpolicy.org/research/deportation-dilemma-reconciling-tough-humane-enforcement).

<sup>15</sup> See Princeton University Mexican Migration Project (MMP), "Graph 2: Access to Border-Crossing Guides and Family/Friends on First Undocumented Trip," accessed March 23, 2015, <http://mmp.opr.princeton.edu/results/002coyote-en.aspx>; MMP, "Graph 1: Border Crossing Costs," accessed March 18, 2015, <http://mmp.opr.princeton.edu/results/001costs-en.aspx>. A second, unfortunate indicator is the number of known fatalities among border crossers, which increased from about 250 per year in 1998-1999 to about 450 per year in 2012-2013, before falling back to about 300 in 2014; see U.S. Border Patrol, "Southwest Border Deaths by Fiscal Year," accessed March 18, 2015, [www.cbp.gov/sites/default/files/documents/BP%20Southwest%20Border%20Sector%20Deaths%20FY1998%20-%20FY2014\\_0.pdf](http://www.cbp.gov/sites/default/files/documents/BP%20Southwest%20Border%20Sector%20Deaths%20FY1998%20-%20FY2014_0.pdf). These data may undercount actual border deaths since they only include cases detected by Border Patrol agents.

just as many U.S. employers during this period accepted the (small) risk of being fined as an acceptable business expense, so too did many unauthorized immigrants come to accept the (somewhat larger) chance of being apprehended as an acceptable part of the immigration process, and almost everyone deported at the border succeeded on a subsequent crossing attempt.<sup>16</sup>

***Recent Evidence Suggests That Further Enforcement Efforts during the Last Decade Have Begun to Pay Off:*** *New investments at the border and in the interior have been associated with falling immigrant apprehensions and a shrinking stock of unauthorized immigrants.*

A number of important new enforcement programs have been implemented or expanded in the last decade. Following passage of the Secure Fence Act of 2006, DHS has completed the installation of fencing, vehicle barriers and other infrastructure along strategically important sectors of the border.<sup>17</sup> The Bush and Obama administrations have taken full advantage of IIRIRA's fast-track removal provisions, particularly for immigrants apprehended at the border, resulting in an unprecedented number of formal removals. And the two administrations also began to prosecute an increasing number of border crossers for immigrant-related criminal offenses, particularly since 2005.<sup>18</sup> By raising the costs (to the immigrant) of enforcement, these efforts appear to have discouraged some border crossers from re-entering the United States following a deportation. Thus, the Border Patrol's recidivism rate (i.e., the proportion of apprehended migrants who are apprehended a second time in the same year) fell from 29 percent in 2007 to 14 percent in 2014.<sup>19</sup>

<sup>16</sup> See for example, Thomas J. Espenshade, "Using INS Border Apprehension Data to Measure the Flow of Undocumented Migrants Crossing the U.S.-Mexico Frontier," *International Migration Review*, vol. 29, no. 2 (1995): 545-65; Wayne A. Cornelius and Idean Salehyan, "Does border enforcement deter unauthorized immigration? The case of Mexican migration to the United States of America," *Regulation & Governance* 1.2 (2007): 139-53; Douglas S. Massey, Jorge Durand and Nolan J. Malone, *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration* (New York: Russell Sage Foundation, 2003).

<sup>17</sup> Remarks of Homeland Security Secretary Jeh Johnson, "Border Security in the 21<sup>st</sup> Century," Center for Strategic and International Studies, Washington, DC, October 9, 2014, [www.dhs.gov/news/2014/10/09/remarks-secretary-homeland-security-jeh-johnson-border-security-21st-century](http://www.dhs.gov/news/2014/10/09/remarks-secretary-homeland-security-jeh-johnson-border-security-21st-century). Also see Seghetti, *Border Security: Immigration Enforcement between Ports of Entry*.

<sup>18</sup> Rosenblum and Meissner with Bergeron and Hipsman, *The Deportation Dilemma*. The Obama administration has developed a Consequence Delivery System to maximize the impact of the CBP prosecution resources and to discourage immigrants from re-entering after deportation: voluntary return has been essentially phased out in favor of formal removal; and migrants with previous apprehensions or criminal records are more likely to be targeted for harsher enforcement outcomes, such as immigration-related criminal charges that may result in jail time and lateral repatriation involving deportation through a port of entry far away from the point of apprehension.

<sup>19</sup> Rosenblum and Meissner with Bergeron and Hipsman, *The Deportation Dilemma*; Seghetti, *Border Security: Immigration Enforcement between Ports of Entry*.

Another important change seen since about 2005 is that the Bush and Obama administrations have put in place a fourth element of the U.S. enforcement system: interior enforcement. While enforcement during the 1980s and '90s was concentrated almost exclusively at the Southwest border, U.S. Immigration and Customs Enforcement (ICE) during the last decade has developed a number of major programs to identify and remove deportable immigrants within the United States, including by partnering with federal, state and local law enforcement agencies.<sup>20</sup> The Obama administration has also significantly expanded audits of employer compliance with IRCA's basic employment verification requirements, with the number of such audits increasing from fewer than 500 in 2008 to more than 3,000 yearly in 2012 and 2013.<sup>21</sup>

Partly as a result of these new programs and investments, the unauthorized population stopped increasing in 2007, and fell by 1 million people (from about 12.2 million to 11.2 million) between 2007 and 2012. As far as we know, this is the first time that the size of the unauthorized population has fallen without a legalization program. Other key indicators of illegal inflows, such as apprehensions at the Southwest border, are also at historic lows, while measures of the effectiveness of enforcement efforts have improved. For example, Southwest border apprehensions—long recognized as an indicator of illegal migration flows—fell to 328,000 in 2011, the lowest level since 1972. While apprehensions rebounded somewhat between 2012 and 2014, the 487,000 apprehensions that occurred in 2014 were still less than one-third the 1.68 million apprehensions recorded in the peak year of 2000.<sup>22</sup> At the same time, however, major new enforcement efforts have coincided with the Great Recession and slow economic recovery, and with reduced push factors in Mexico, so it's not clear exactly how much of these gains are due to more effective enforcement versus changes in the drivers of migration flows.

<sup>20</sup> See testimony of Marc R. Rosenblum, Deputy Director, U.S. Immigration Policy Program, Migration Policy Institute, before the House Judiciary Committee, *Examining the Adequacy and Enforcement of Our Nation's Immigration Laws*, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., February 3, 2015, [http://judiciary.house.gov/index.cfm/hearings?Id=04BC548D-5FAF-45CC-841D-22DEF85672D6&Statement\\_id=CACA9A5E-9381-46D2-BB4A-4C28899B2170](http://judiciary.house.gov/index.cfm/hearings?Id=04BC548D-5FAF-45CC-841D-22DEF85672D6&Statement_id=CACA9A5E-9381-46D2-BB4A-4C28899B2170); also see Marc R. Rosenblum and William Kandel, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens*, CRS Report R42057 (Washington, DC: Congressional Research Service, 2012), <http://fas.org/sgp/crs/homesec/R42057.pdf>.

<sup>21</sup> *Business Management Daily*, "I-9 Audits Again Hit Record; Get Forms in Compliance," October 2, 2014, [www.businessmanagementdaily.com/40994/i-9-audits-again-hit-record-get-forms-in-compliance#](http://www.businessmanagementdaily.com/40994/i-9-audits-again-hit-record-get-forms-in-compliance#).

<sup>22</sup> Moreover, apprehensions of Mexicans have continued to fall since 2011, reaching a low point of 227,000 in fiscal year 2014. The ongoing downward trend in apprehensions is significant because Mexicans have traditionally accounted for about 97 percent of apprehensions. Meanwhile, the growth in apprehensions since 2011 consists almost entirely of Central Americans, about half of whom are families and children presenting themselves at the border and seeking asylum or other form of humanitarian protection. For a fuller discussion see Rosenblum, *Examining the Adequacy and Enforcement of Our Nation's Immigration Laws*.

*Unintended Consequences of Immigration Control Policies: Border enforcement has reduced return migration.*

While efforts to secure the Southwest border failed to deter northbound crossers during the 1980s and '90s, analysts have found that the higher costs and risks of crossing the border had the perverse effect of encouraging unauthorized immigrants to remain in the United States for longer periods of time, rather than traveling back and forth between the United States and Mexico (or elsewhere in Latin America).<sup>23</sup> In this way, the higher cost of crossing the border reinforced trends in the U.S. labor market toward more year-round employment, and more employment opportunities for unauthorized immigrant women. Thus, according to a decades-long bi-national U.S.-Mexico survey, the probability that a first-time unauthorized immigrant from Mexico would return home within a year of arrival fluctuated between 55 and 60 percent between 1965 and 1986; but by 2009 the probability of a return trip within a year had fallen to zero.<sup>24</sup> Similarly, the median length of U.S. residence among unauthorized immigrants (estimated using U.S. Census Bureau data) has risen from 7.4 years in 2003 to 12.7 years in 2013; and 62 percent of unauthorized immigrants have lived in the United States for a decade or more, compared with 35 percent in 2000.<sup>25</sup> As University of California-San Diego political scientist Wayne Cornelius concludes, "Given the high costs and physical risks of illegal entry today, [unauthorized immigrants] have a strong incentive to extend their stays in the U.S.; and the longer they stay, the more probable it is that they will settle permanently."<sup>26</sup>

The shift toward permanent U.S. settlement has been reinforced by the three- and 10-year bars on re-entry included in the 1996 IIRIRA law. These bars prohibit unauthorized immigrants who have been unlawfully present in the United States for at

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<sup>23</sup> Lecture by Douglas S. Massey, Henry G. Bryant Professor of Sociology and Public Affairs, Princeton, "Chain Reaction: The Causes and Consequences of America's War on Immigrants," Institute for the Study of Labor, Julian Simon Lecture Series no. VIII, May 2011, [www.iza.org/conference\\_files/amm2011/massey\\_d1244.pdf](http://www.iza.org/conference_files/amm2011/massey_d1244.pdf). Also see Jorge Durand, Douglas S. Massey and Emilio A. Parrado, "The New Era of Mexican Migration to the United States," *Journal of American History* vol. 86 no. 2 (1999): 518-36, [www.journalofamericanhistory.org/projects/mexico/jdurand.html](http://www.journalofamericanhistory.org/projects/mexico/jdurand.html); Manuela Angelucci, "U.S. Border Enforcement and the Net Flow of Mexican Illegal Migration" (IZA Discussion Paper Series, IZA DP No. 1642, Institute for the Study of Labor, Bonn, June 2005), <http://ftp.iza.org/dp1642.pdf>; Wayne A. Cornelius, "Impacts of Border Enforcement on Unauthorized Mexican Migration to the United States," *Border Battles: The U.S. Immigration Debates*, September 2006, <http://borderbattles.ssrc.org/Cornelius/index.html>.

<sup>24</sup> Massey, "Chain Reaction."

<sup>25</sup> Jeffrey S. Passel, D'Vera Cohn, Jens Manuel Krogstad and Ana Gonzalez-Barrera, *As Growth Stalls, Unauthorized Immigrant Population Becomes More Settled* (Washington, DC: Pew Research Center, 2014), [www.pewhispanic.org/2014/09/03/as-growth-stalls-unauthorized-immigrant-population-becomes-more-settled/](http://www.pewhispanic.org/2014/09/03/as-growth-stalls-unauthorized-immigrant-population-becomes-more-settled/).

<sup>26</sup> Cornelius, "Impacts of Border Enforcement on Unauthorized Mexican Migration to the United States."

least six months from receiving visas to re-enter the United States for three years, and those unlawfully present for more than one year from re-entering for 10 years. The bars mean that many unauthorized immigrants who are eligible for immigrant visas (primarily through marriage, other family ties or employment) are forced to remain in unauthorized status rather than claiming their visas, because unauthorized immigrants who entered the United States without inspection can only adjust to legal status (i.e., claim a visa) at a U.S. consulate located *outside* the country. Yet by leaving the country to claim their visas, these immigrants would cause the bars on re-entry to go into effect, and they would be prohibited from re-entering.<sup>27</sup> The Migration Policy Institute (MPI) has estimated that as many as 1.3 million unauthorized immigrants are spouses of U.S. citizens or parents of U.S. citizens over the age of 21, and therefore are immediately eligible for a green card under existing immigration law barring disqualifying factors.<sup>28</sup> The fact that so many people who are eligible for visas are nonetheless unauthorized suggests that they are unable to claim their visas because of the three- and 10-year bars.

### Legal Migration as an Alternative to Unauthorized Flows

One of the topics for this hearing is how the legal immigration system could be modified to reduce pressures for unauthorized flows. With this goal in mind, several recent immigration reform proposals would expand and modify existing low-skilled temporary work visas, such as the H-2A visa for temporary agricultural workers and the H-2B visa for temporary non-agricultural workers, or would create new temporary visas for low-skilled workers.

Congress should create new employment-based visas as part of a broader strategy to reduce illegal immigration, but to be effective any new visa program would need to differ from the existing H-2A and H-2B programs in a number of ways. A key challenge would be to design an employment-based visa that attracts employer participation, but also provides adequate worker protections to prevent immigrants from being exploited and to guard against downward pressure on U.S. wages. Striking this balance would also require changes to worksite enforcement. While new

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<sup>27</sup> For a fuller discussion, see testimony of Paul W. Virtue, attorney, Hearing on Shortfalls of 1996 Immigration Reform Legislation, before the House Judiciary Committee Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., April 20, 2007, [www.aila.org/File/Related/07042463d.pdf](http://www.aila.org/File/Related/07042463d.pdf).

<sup>28</sup> Randy Capps and Marc R. Rosenblum with James D. Bachmeier, *Executive Action for Unauthorized Immigrants: Estimates of the Population that Could Receive Relief* (Washington, DC: Migration Policy Institute, 2014), [www.migrationpolicy.org/research/executive-action-unauthorized-immigrants-estimates-populations-could-receive-relief](http://www.migrationpolicy.org/research/executive-action-unauthorized-immigrants-estimates-populations-could-receive-relief).

employment-based visas, designed correctly, would reduce illegal immigration and strengthen the U.S. economy, it bears emphasizing that such visas are just one of several changes to U.S. immigration policy that Congress should undertake.

***Why Congress Should Create a More Flexible Employment-Based Visa***

***System:*** *Employment-based visas reduce unauthorized flows and strengthen the U.S. economy.*

Employment-based visas help combat illegal immigration and strengthen the U.S. economy.

Unauthorized immigrants are highly responsive to labor market demand, which makes them obvious candidates for employment-based visas. Most unauthorized immigrants are motivated, to varying degrees, by better employment opportunities,<sup>29</sup> and unauthorized immigrants have a higher labor force participation rate than U.S. natives.<sup>30</sup> Many employers who hire unauthorized immigrants would prefer to hire lawful workers if a system were in place that allowed them to do so, but U.S. immigration law allocates only 5,000 green cards annually for low-skilled workers.

Perhaps the most important reason Congress should expand legal immigration of low-skilled workers is that the United States has reached the limits of what enforcement-only approaches to preventing illegal immigration can be expected to achieve. We are at a point of diminishing returns without additional complementary policies that address the underlying dynamics of illegal immigration. As described earlier, successive Congresses and presidents have implemented a series of reforms since 1986 to combat illegal immigration. During this period, total spending on immigration enforcement increased from \$574 million to \$18.3 billion; and the United States has spent \$208 billion on immigration enforcement just since 2001.<sup>31</sup> By comparison, the United States has spent an annual average in the last five years of \$15.2 billion on *all other federal criminal law enforcement agencies combined*.<sup>32</sup> INS budgets consistently lagged the budgets of other law enforcement agencies in the 20 years before 9/11, but

<sup>29</sup> See for example, Douglas Massey, Joaquin Arango, Graeme Hugo, et al., *Worlds in Motion: Understanding International Migration at the End of the Millennium* (New York: Oxford University Press, 2005).

<sup>30</sup> The Migration Policy Institute (MPI) estimates that 72 percent of unauthorized immigrants were either employed or looking for work in 2012, compared to 64 percent of all U.S. workers; see MPI, "Estimates of the Unauthorized Population: United States," [www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US](http://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US); and U.S. Department of Labor, Bureau of Labor Statistics, "Labor Force Statistics from the Current Population Survey," accessed March 23, 2015, <http://data.bls.gov/pdq/SurveyOutputServlet>.

<sup>31</sup> Calculations based on Doris Meissner, Donald M. Kerwin, Muzaffar Chishti and Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery* (Washington, DC: Migration Policy Institute, 2013), <http://migrationpolicy.org/research/immigration-enforcement-united-states-rise-formidable-machinery>.

<sup>32</sup> Ibid.

immigration enforcement spending has grown three times faster than other federal law enforcement spending since 2001.<sup>33</sup> In contrast, U.S. employment-based visa policies have been frozen since 1990. The combination of robust enforcement and rigid employment-based visa policies must be recalibrated to resolve the problem of an unauthorized population that has increased three-fold during this period.

Moreover, while there are costs associated with unauthorized immigrants living in the United States, in aggregate and over the long term the taxes paid by immigrants exceed the cost of services they consume (i.e., immigrants are a net fiscal benefit to the United States); and immigrants also promote growth and productivity.<sup>34</sup> The fiscal and overall economic benefits of immigration increase as unauthorized immigrants obtain legal status, primarily because legal immigrants are more likely to join the formal economy and pay greater state and federal income and payroll taxes. Legalization also promotes integration, enhances immigrants' earning power and promotes economic growth because legal immigrants have fuller access to U.S. labor and financial markets, more ability to upgrade and utilize their skills and increased protection against discrimination and exploitation by unscrupulous employers.

The primary evidence for the economic benefits of legalization is based on the experiences of immigrants legalizing after IRCA. Two key longitudinal surveys conducted by the Department of Labor found that immigrants' wages increased by up to 15 percent after they acquired legal status.<sup>35</sup> Sherrie Kossoudji and Deborah Cobb-Clark, in two separate studies, found that the wage benefit of legalization under IRCA was approximately 6 percent by 1992, and that by that same year, 38.8 percent of Mexican men who legalized under the law had moved on to higher-paying

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<sup>33</sup> Ibid. Other federal law enforcement agencies include the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), Secret Service, U.S. Marshals Service and Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

<sup>34</sup> See, for example, Congressional Budget Office (CBO), *The Impact of Unauthorized Immigrants on the Budgets of State and Local Governments* (Washington, DC: CBO, 2007), [www.cbo.gov/sites/default/files/12-6-immigration.pdf](http://www.cbo.gov/sites/default/files/12-6-immigration.pdf); Gordon H. Hanson, *The Economics and Policy of Illegal Immigration in the United States* (Washington, DC: MPI 2009), [www.migrationpolicy.org/research/economics-and-policy-illegal-immigration-united-states](http://www.migrationpolicy.org/research/economics-and-policy-illegal-immigration-united-states); Organization for Economic Cooperation and Development (OECD), "Fiscal Impact of Immigration on OECD Countries," in *Migration Outlook 2013* (Paris: OECD Publishing, 2013), [www.keepeek.com/Digital-Asset-Management/oecd/social-issues-migration-health/international-migration-outlook-2013\\_migr\\_outlook-2013-en#page1](http://www.keepeek.com/Digital-Asset-Management/oecd/social-issues-migration-health/international-migration-outlook-2013_migr_outlook-2013-en#page1); Giovanni Peri, "The Effect of Immigration on Productivity: Evidence from U.S. States," *Review of Economics and Statistics* 94 no. 1 (2012): 348–58; James P. Smith and Barry Edmonston, eds., *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration* (Washington, DC: National Academies Press, 1997).

<sup>35</sup> See Labor Department, "The 1989 Legalized Population Survey (LPS1)," and "The 1992 Legalized Population Follow-Up Survey (LPS-2)," available at: <http://mmp.opr.princeton.edu/LPS/LPSpage.htm>.

occupations.<sup>36</sup> Another study by Francisco Rivera-Batiz in 1999 found a wage increase of approximately 15 percent for men legalized under IRCA and 21 percent for women, and that immigrants' change in legal status had a "strong positive effect" on their earnings.<sup>37</sup>

More recently, researchers have found similar results for beneficiaries of the Deferred Action for Childhood Arrivals (DACA) temporary legalization program. A national survey of DACA youth found that 61 percent found a new job after receiving DACA status.<sup>38</sup> Another national survey found that 70 percent of DACA beneficiaries reported getting their first job or moving to a better job, and 51 percent reported being able to earn more money to assist their families.<sup>39</sup>

***The Goals of Employment-Based Visas:*** *Employment-based visas should ensure adequate labor supply while protecting the interests of U.S. workers.*

Immigrants benefit the U.S. economy and support robust economic growth, but immigration also has distributive effects and undermines the economic interests of some workers. The basic goals of employment-based immigration policy should be to facilitate immigrants' economic contribution while minimizing any adverse impacts on U.S. workers. From the employers' perspective, immigration policy should provide a flexible and mobile response to labor shortages. From the workers' perspective, immigration policy should protect the job opportunities, wages and working conditions of U.S. workers, and should ensure that migrant workers truly complement the U.S. workforce rather than simply providing a cheaper or more pliable alternative.<sup>40</sup> The logic of employment-based immigration policy is to balance these

<sup>36</sup> Sherrie Kossoudji and Deborah Cobb-Clark, *Coming Out of the Shadows: Learning about Legal Status and Wages From the Legalized Population* (October 1998), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=166535](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=166535); Sherrie Kossoudji and Deborah Cobb-Clark, "IRCA's Impact on the Occupational Concentration and Mobility of Newly-Legalized Mexican Men," *Journal of Population Economics* 13 (2000): 81-98.

<sup>37</sup> Francisco L. Rivera-Batiz, "Undocumented workers in the labor market: An analysis of the earnings of legal and illegal Mexican immigrants in the United States," *Journal of Population Economics* 12 (1999): 91-116.

<sup>38</sup> Roberto G. Gonzalez and Veronica Terriquez, *How DACA is Impacting the Lives of Those Who Are Now DACAmented: Preliminary Findings from the National UnDACAmented Research Project* (Washington, DC: American Immigration Council, 2013), [www.immigrationpolicy.org/just-facts/how-daca-impacting-lives-those-who-are-now-dacamented](http://www.immigrationpolicy.org/just-facts/how-daca-impacting-lives-those-who-are-now-dacamented).

<sup>39</sup> Tom K. Wong and Carolina Valdivia, *In Their Own Words: A Nationwide Survey of Undocumented Millennials* (Working Paper No. 191, Center for Comparative Immigration Studies, San Diego, CA, May 2014), <http://ccis.ucsd.edu/wp-content/uploads/Tom-Wong-In-their-own-words-WP-191.pdf>.

<sup>40</sup> For a fuller discussion of the goals of employment-based visas, see Demetrios G. Papademetriou, Doris Meissner, Marc R. Rosenblum and Madeleine Sumption, *Aligning Temporary Immigration Visas with U.S. Labor Market Needs: The Case for a New System of Provisional Visas* (Washington, DC: Migration Policy Institute, 2009), [www.migrationpolicy.org/research/aligning-temporary-immigration-visas-us-labor-market-needs-case-new-system-provisional](http://www.migrationpolicy.org/research/aligning-temporary-immigration-visas-us-labor-market-needs-case-new-system-provisional).



interests: guarantee that employers have access to needed workers but only under conditions that protect native workers.

***Existing Low-Skilled Temporary Worker Programs Do Not Meet These Goals:***

*Programs fail to meet employer demands for needed workers, do not place U.S. workers first in line for employment and lead to exploitation of immigrant workers, which harms native workers.*

The United States currently operates two main<sup>41</sup> low-skilled temporary worker programs: the H-2A program for temporary agricultural workers and the H-2B program for temporary non-agricultural workers. In short, these existing programs have failed to meet both of their core goals: they do not provide employers with needed workers—and for that reason they also fail to prevent unauthorized employment—and they do not protect the interests of U.S. workers.

***The H-2A and H-2B programs fail to meet employers' demands for needed workers*** for three main reasons. First, the programs—designed in 1986 and last modified in 1990—fail to cover the types of jobs most unauthorized immigrants perform and that employers of foreign workers demand. The H-2A program is generally limited to short-term and seasonal agricultural work; the H-2B program is limited to non-agricultural work that is strictly temporary, including seasonal or intermittent work or work related to a one-time project. The H-2B program is also limited to 66,000 visas per year—as compared to an unauthorized workforce in 2012 of about 7.6 million people.<sup>42</sup> Yet the vast majority of unauthorized immigrants are employed in year-round, non-agricultural work. MPI estimates that in 2008-2012, 1.4 million unauthorized immigrants (18 percent of working unauthorized immigrants) were employed in arts, entertainment, recreation, accommodation or food service jobs; 1.3 million (16 percent) were employed in construction; 1.1 million (13 percent) in professional, scientific, management, administrative and waste-management services; and 1.0 million (12 percent) in manufacturing.<sup>43</sup> By comparison, while estimates of the number of unauthorized agriculture workers vary widely, they are

<sup>41</sup> A number of additional non-immigrant visas also may permit lower-skilled workers to be employed in the United States, notably the A, E-1, E-2, G, L-1, J-1 and P visas. In general, these programs enjoy far fewer worker protections than the H-2 visas, and a number of studies have documented abusive conditions and other problem. See for example, Daniel Costa, "Guestworker Diplomacy: J Visas Receive Minimal Oversight Despite Significant Implications for The U.S. Labor Market" (EPI Briefing Paper No. 317, Economic Policy Institute, Washington, DC, July 2011), <http://s4.epi.org/files/2011/BriefingPaper317.pdf>; Lydia DePillis, "Au Pairs Provide Cheap Childcare. Maybe Illegally Cheap," *Washington Post* WonkBlog, March 20, 2015, [www.washingtonpost.com/blogs/wonkblog/wp/2015/03/20/au-pairs-provide-cheap-childcare-maybe-illegally-cheap/?postshare=1711426995634106](http://www.washingtonpost.com/blogs/wonkblog/wp/2015/03/20/au-pairs-provide-cheap-childcare-maybe-illegally-cheap/?postshare=1711426995634106).

<sup>42</sup> MPI, "Estimates of the Unauthorized Population: United States," accessed March 23, 2015, [www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US](http://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US).

<sup>43</sup> Ibid.

undoubtedly a small minority of the total unauthorized workforce, and a much lower share than they were at the time the H-2A program was designed in 1986. Under current temporary worker program rules, employers in industries employing large numbers of unauthorized immigrants only had the option of hiring legal non-immigrant workers if their positions were of a temporary or seasonal nature.

A second limitation of the H-2A and H-2B programs is that the visas are limited to one year, with up to two extensions under certain circumstances, after which time workers must leave the United States for at least six months. This requirement means that employers cannot retain valued employees and provide them with additional training or give them greater responsibility, limiting the value of these programs.

Third, the current system fails to meet employers' need for efficiency and flexibility because rules designed to protect U.S. workers make the process long, burdensome and unpredictable for many employers. The current system relies heavily on detailed "positive recruitment requirements" to ensure that U.S. workers are not available for a job before an employer may hire an immigrant. While testing the labor market is an intuitive way to protect U.S. workers, actual recruitment and advertising rules are artificial and complex, and they are often out of step with how recruitment actually takes place.<sup>44</sup> In addition, employer recruitment efforts for low-skilled workers must be individually certified by the Labor Department, leading to further delays and uncertainty about when and whether visa applications will be approved. Employer groups have argued that these requirements make the H-2A and H-2B programs too difficult to use and have been important barriers to employers' use of these programs.<sup>45</sup>

At the same time, ***H-2A and H-2B recruitment requirements and other program rules are equally ineffective at protecting the interests of U.S. workers.*** With respect to the recruitment process in particular, U.S. workers may not learn about job openings because requirements are poorly aligned with actual hiring processes; in some cases employers may go through the motions of "positive recruitment" while actually targeting their advertising and recruitment efforts at immigrant workers. Thus,

<sup>44</sup> Andorra Bruno, *Immigration of Temporary Lower-Skilled Workers: Current Policy and Related Issues*, CRS Report R42434 (Washington, DC: CRS, 2012), <https://fas.org/sgp/crs/homesec/R42434.pdf>.

<sup>45</sup> See, for example, testimony of Laura Reiff, Principal Shareholder, Greenberg Traurig, and Chair, Business Immigration and Compliance Group, Essential Worker Immigration Coalition, *Examining the Role of Lower-Skilled Guest Worker Programs in Today's Economy*, before the House Committee on Education and the Workforce Subcommittee on Workforce Protections, 113<sup>th</sup> Cong., 1<sup>st</sup> sess., March 14, 2013, [www.gpo.gov/fdsys/pkg/CHRG-113hhrg79739/html/CHRG-113hhrg79739.htm](http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg79739/html/CHRG-113hhrg79739.htm); U.S. Chamber of Commerce and ImmigrationWorksUSA, *The Economic Impact of H-2B Workers* (Washington, DC: U.S. Chamber of Commerce and ImmigrationWorks USA, 2010), [www.uschamber.com/sites/default/files/legacy/reports/16102\\_LABR%20H2BReport\\_LR.pdf](http://www.uschamber.com/sites/default/files/legacy/reports/16102_LABR%20H2BReport_LR.pdf).

advocates have repeatedly testified that qualified U.S. workers are passed over by employers who prefer to hire foreign workers.<sup>46</sup> Available research confirms that existing labor certification rules rarely lead to the hiring of U.S. workers. For example, a 1988 study found that the Permanent Labor Certification (PERM) process led to job offers for U.S. workers in just 0.05 percent of cases,<sup>47</sup> and a 2003 audit of H-2A certifications found that recruitment requirements results in U.S. workers being hired for just 2 percent of the positions advertised.<sup>48</sup> More generally, many labor economists are skeptical that the United States faces a true low-skilled labor shortage; taking additional steps to reduce U.S. unemployment and under-employment, clearing existing visa backlogs and legalizing current unauthorized workers could go a long way to meeting current and future employment demand.<sup>49</sup>

Existing programs also fail to adequately protect immigrant workers, leading to downward pressure on wages and working conditions throughout the affected industries and thus harming U.S. workers. Exploitation of temporary workers often begins during the workers' recruitment process, as many U.S. employers rely on recruitment agencies to contract with foreign workers,<sup>50</sup> and labor recruiters often charge workers thousands of dollars in illegal fees.<sup>51</sup> Temporary workers therefore

<sup>46</sup> See, for example, testimony of Bruce Goldstein, Executive Director, Farmworker Justice, *Do Federal Programs Ensure U.S. Workers Are Recruited First Before Employers Hire From Abroad?*, before the House Education and Labor Committee, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 6, 2008; testimony of Javier Riojas, Attorney/Branch Manager, Texas RioGrande Legal Aid, *Do Federal Programs Ensure U.S. Workers Are Recruited First Before Employers Hire From Abroad?*, before the House Education and Labor Committee, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 6, 2008. Also see Farmworker Justice, *Litany of Abuses: More – Not Fewer Labor Protections Needed in the H-2A Guestworker Program* (Washington, DC: Farmworker Justice, 2008).

<sup>47</sup> Demetrios G. Papademetriou and Stephen Yale-Loehr, *Balancing Interests: Rethinking US Selection of Skilled Immigrants* (Washington, DC: Carnegie Endowment for International Peace, 1996).

<sup>48</sup> Labor Department, Office of the Inspector General, *Overview and Assessment of Vulnerabilities in the Department of Labor's Alien Labor Certification Programs Office*, Office of Audit, Report No. 06-03-007-03-321 (Washington, DC: Labor Department, Office of the Inspector General, 2003), [www.oig.dol.gov/public/reports/oa/2003/06-03-007-03-321.pdf](http://www.oig.dol.gov/public/reports/oa/2003/06-03-007-03-321.pdf).

<sup>49</sup> See for example, Ray Marshall, "Migration and Domestic Labor Markets: Auctions and Employer Demand versus Public Policy" (EPI Briefing Paper No. 350, Economic Policy Institute, Washington, DC, November 2012), <http://s4.cpi.org/files/2012/bp350-adjusting-migration-domestic-labor-markets.pdf>. As Marshall observes, a 2011 McKinsey Global Institute analysis projects a year 2020 surplus in the United States of 5.9 million workers without high school degrees and 800,000 high school graduates; also see James Manyika, Susan Lund, Byron Auguste, Lenny Mendonca, Tim Welsh and Sreenivas Ramaswamy, *An Economy That Works* (McKinsey Global Institute, 2011),

[www.mckinsey.com/insights/mgi/research/labor\\_markets/an\\_economy\\_that\\_works\\_for\\_us\\_job\\_creation](http://www.mckinsey.com/insights/mgi/research/labor_markets/an_economy_that_works_for_us_job_creation).

<sup>50</sup> Centro de los Derechos del Migrante Inc. and American University, Washington College of Law, *Picked Apart: The Hidden Struggles of Migrant Worker Women in the Maryland Crab Industry* (Washington, DC: Centro de los Derechos del Migrante Inc. and American University, Washington College of Law, 2010), [www.cdmigrante.org/wp-content/uploads/2012/01/PickedApart.pdf](http://www.cdmigrante.org/wp-content/uploads/2012/01/PickedApart.pdf).

<sup>51</sup> International Labor Recruitment Group, *The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse* (International Labor Recruitment Group, 2013),

arrive in debt, and are especially dependent upon their employers for continuing employment.

This dependence is exacerbated by H-2 visa rules, which tie workers' immigration status to a specific employer, and thus prevent visa holders from changing jobs or leaving an abusive employer. The resulting imbalance of power is further exacerbated by employer abuses, such as seizures of workers' Social Security cards and passports.<sup>52</sup> Indeed, many of the same labor abuses affecting unauthorized workers are also found in the H-2 programs, including wage theft and abusive recruitment practices.<sup>53</sup> In fact, a 2008 study of forestry workers found no real difference in the working conditions of unauthorized immigrants and H-2 workers.<sup>54</sup> Retaliation, including the threat of deportation, and blacklisting are also problems in the H-2 programs, so workers often fail to assert their rights for fear of being unable to find work elsewhere.<sup>55</sup>

***Recommended Reforms to Low-Skilled Temporary Worker Programs: How to better meet employer needs and better protect U.S. and foreign workers.***

As the preceding discussion makes clear, facilitating legal migration would help reduce illegal immigration flows, and moving unauthorized workers into the legal economy would benefit the U.S. economy and U.S. workers; the current H-2A and H-2B programs, however, have not met employers' labor demands or protected U.S. workers.

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<https://fairlaborrecruitment.files.wordpress.com/2013/01/final-e-version-ilrvg-report.pdf>. This abuse occurs even though there are regulations that prohibit employers from knowingly charging or permitting recruiters to charge recruitment fees. Also see testimony of Miguel Angel Jovel Lopez, former H-2B guestworker with Cumberland Environmental Resources Co., *The H-2B Guestworker Program and Improving the Department of Labor's Enforcement of the Rights of Guestworkers*, House Committee on Oversight and Government Reform, Domestic Policy Subcommittee, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., April 23, 2009, [www.gpo.gov/fdsys/pkg/CHRG-111hhrg51324/html/CHRG-111hhrg51324.htm](http://www.gpo.gov/fdsys/pkg/CHRG-111hhrg51324/html/CHRG-111hhrg51324.htm); Dovelyn Rannveig Agunias, *Migration's Middlemen: Regulating Recruitment Agencies in the Philippines-United Arab Emirates Corridor* (Washington, DC: MPI, 2010), [www.migrationpolicy.org/research/migrations-middlemen-regulating-recruitment-agencies-philippines-united-arab-emirates](http://www.migrationpolicy.org/research/migrations-middlemen-regulating-recruitment-agencies-philippines-united-arab-emirates).

<sup>52</sup> U.S. Government Accountability Office (GAO), *H-2A and H-2B Visa Programs: Increased Protections Needed for Foreign Workers* (Washington, DC: GAO, 2015), [www.gao.gov/assets/670/668875.pdf](http://www.gao.gov/assets/670/668875.pdf); Centro de los Derechos del Migrante Inc. and American University, Washington College of Law, *Picked Apart: The Hidden Struggles Of Migrant Worker Women In The Maryland Crab Industry*.

<sup>53</sup> Farmworker Justice, *No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers* (Washington, DC: Farmworker Justice, 2011), [www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20No%20Way%20To%20Treat%20A%20Guest%20H-2A%20Report.pdf](http://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20No%20Way%20To%20Treat%20A%20Guest%20H-2A%20Report.pdf). Also see Human Rights Watch (HRW), *Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards* (New York: HRW, 2000), [www.hrw.org/reports/pdfs/u/us/uslbr008.pdf](http://www.hrw.org/reports/pdfs/u/us/uslbr008.pdf).

<sup>54</sup> Brinda Sarathy and Vanessa Casanova, "Guest Workers or Unauthorized Immigrants? The Case of Forest Workers in the United States," *Policy Sciences* vol. 41, no. 2 (2008): 95-114.

<sup>55</sup> HRW, *Unfair Advantage*.

Thus, Congress should consider the following reforms to existing low-skilled temporary worker programs as part of a program to reduce illegal immigration, strengthen the U.S. economy and protect U.S. workers:

- ***Develop a mechanism to adjust visa limits up or down in response to changing economic conditions.*** The 66,000 visa annual cap on the H-2B program was established by Congress in 1990, and has remained in place through 25 years of dynamic changes to the U.S. economy; limits on other temporary and permanent visas are equally inflexible. MPI has long recommended that Congress establish a federal immigration and labor markets research agency that reports to an independent, bipartisan expert panel charged with making bi-annual recommendations to Congress and the president about visa numbers, and that the panel's recommendations go into effect unless Congress acts to override them.<sup>56</sup> Employers should have access to more visas during years of economic expansion, and the number of available visas should be proportionally reduced during years of recession or slow-growth periods. Whether through such an expert panel, commission or comparable mechanism, it is essential that Congress develop a system that introduces needed flexibility into a visa system that is currently frozen and outdated, changing only once every few decades.
- ***Permit foreign workers to change jobs and provide them with additional labor protections.*** Making employers the owners of their workers' visas invites exploitation and reduces economic growth by preventing workers from moving into more competitive positions. Visa portability would permit immigrants to leave bad jobs and abusive employers, allowing more room for market forces to set wages and working conditions.<sup>57</sup> One way to allow visa portability would be to create a two-track system, in which employers are approved for the right to hire foreign workers, workers are approved for the right to work in the United States and both sides are free to contract with any approved party.<sup>58</sup> An

<sup>56</sup> Doris Meissner, Deborah W. Meyers, Demetrios G. Papademetriou and Michael Fix, *Immigration and America's Future: A New Chapter* (Washington, DC: MPI, 2006), [www.migrationpolicy.org/research/immigration-and-americas-future-new-chapter](http://www.migrationpolicy.org/research/immigration-and-americas-future-new-chapter); Demetrios G. Papademetriou, Doris Meissner, Marc R. Rosenblum and Madeleine Sumption, *Harnessing the Advantages of Immigration for a 21st-Century Economy: A Standing Commission on Labor Markets, Economic Competitiveness, and Migration* (Washington, DC: MPI, 2009), [www.migrationpolicy.org/research/harnessing-advantages-immigration-21st-century-economy-standing-commission-labor-markets](http://www.migrationpolicy.org/research/harnessing-advantages-immigration-21st-century-economy-standing-commission-labor-markets).

<sup>57</sup> Papademetriou, Meissner, Rosenblum and Sumption, *Aligning Temporary Immigration Visas with U.S. Labor Market Needs*, 16.

<sup>58</sup> This approach was proposed in S.744, the Border Security, Economic Opportunity and Immigration Modernization Act that passed the Senate in June 2013.

alternative approach would be to continue permitting employers to sponsor specific workers but to permit workers to change jobs if another approved employer buys out the time on the visa contract by reimbursing a pro-rated portion of the original sponsor's visa fees. In any case, foreign workers who are hired for ongoing positions should have full visa portability (i.e., the ability to take any job they want) after a specified but relatively short period of time.<sup>59</sup> At a minimum, whether or not portability provisions such as these are enacted, foreign workers should be able transfer their visas to another employer if they have a legitimate complaint about illegal employer behavior or if they are involved in a labor investigation or dispute that has been found to be bona fide by a local, state or federal agency. This will reduce foreign workers' vulnerability to being retaliated against for making such complaints.

- ***Restructure most temporary visas as provisional visas*** that allow visa holders to qualify for permanent residence after a given time period, assuming certain additional criteria have been met. Along with visa portability, provisional visas would give immigrants clear ownership of their visas within a reasonable time frame. Provisional visas are good for employers because they would be able to retain valued workers for longer periods rather than suffering high turnover and repeatedly enduring a burdensome recruitment process. And by attaching sensible requirements to a provisional workers' adjustment process—that they remain employed, learn English and maintain a clean criminal record, for instance—a provisional visa system would promote immigrant integration. Temporary or circular visas should remain in use only for genuinely seasonal work.<sup>60</sup>
- ***Create a licensing requirement for foreign labor contractors.*** At present, the large foreign labor recruitment sector is largely unregulated—despite the fact these gatekeepers between an abundant supply of workers and a scarcer supply of U.S. vacancies hold significant power over foreign workers. Under a licensing system, labor contractors and primary employers would be jointly responsible for the enforcement of wages and working conditions, and jointly liable for unlawful behavior. Labor recruiters who expose foreign workers to exploitative working conditions, who charge excessive fees, who misrepresent the terms of employment to their clients or who retaliate against workers who complain or report unlawful or prohibited activities would be sanctioned and

<sup>59</sup> Papademetriou, Meissner, Rosenblum and Sumption, *Aligning Temporary Immigration Visas with U.S. Labor Market Needs*.

<sup>60</sup> For a fuller discussion of provisional visas, see Papademetriou, Meissner, Rosenblum and Sumption, *Aligning Temporary Immigration Visas with U.S. Labor Market Needs*.

could lose their license. Employers who colluded with recruiters in such illegal or prohibited activities or failed to prevent them would be fined and barred from participating in employment-based visa programs. Since many contractors are based in countries of origin, cooperation with Mexico and other major sending countries would be required to make a licensing system effective.

- ***Simplify and streamline the foreign worker hiring process.*** Employers recruiting new employment-based immigrants from abroad should be required to advertise positions for a set period of time and to make a good-faith effort to recruit native workers but they should not be required to have their recruitment efforts certified on an individual, case-by-case basis by a government agency or court.<sup>61</sup> As long as the system provides clear incentives to favor U.S. workers—such as through higher visa fees, as discussed below—employers should not be required under most circumstances to favor a minimally qualified native worker over an immigrant who is more qualified from the employer’s perspective. Employers should be able to file labor certification and visa petition applications at the same time online and to track the status of their applications through a single interface.
- ***Raise employment-based visa fees.*** Current visa fees are quite low as a percentage of salary, ranging from \$325 for an H-2A visa and \$475 for an H-2B visa, up to \$2,325 for some H-1B visas (for high-skilled workers), while many employers spend many times this amount on immigration-related legal fees and advertising. In exchange for a simpler recruitment process, employers should pay a higher visa fee, with fees set at about 10 percent of salary for workers in a given visa category: about \$1,500 for a low-skilled worker ranging up to \$10,000 or more for the most highly skilled workers. High visa fees would create clear and transparent incentives for employers to favor U.S. workers, and visa fees could be used to improve workforce development and job-matching mechanisms for U.S. workers.
- ***Expand the entry-exit system to track foreign workers.*** An estimated 40 – 50 percent of unauthorized immigrants enter as legal non-immigrants and then overstay their visas,<sup>62</sup> and this proportion likely has increased in recent years as

<sup>61</sup> Most advanced industrialized nations require employer advertising for at least some visa types. However, most also do not attempt to verify whether qualified candidates applied and/or were rejected, on the basis that this process is quite burdensome and is unlikely to increase the hiring of natives. See OECD, *International Migration Outlook SOPEMI – 2008 Edition* (Paris: OECD Publishing, 2008), 159, [www.oecd.org/migration/mig/41275373.pdf](http://www.oecd.org/migration/mig/41275373.pdf).

<sup>62</sup> Pew Hispanic Center, “Fact Sheet: Modes of Entry for the Unauthorized Migrant Population,” (fact sheet, Pew Hispanic Center, Washington, DC, May 22, 2006), [www.pewhispanic.org/files/factsheets/19.pdf](http://www.pewhispanic.org/files/factsheets/19.pdf). This

U.S. Customs and Border Protection (CBP) has strengthened border security. DHS has taken steps to address this problem by establishing data-sharing programs with Canada and with private air and sea carriers to track exits at the northern border and at air and sea ports; but no system exists to track southern border land exits, a population which should have consisted of about 180 million people in 2014.<sup>63</sup> Any temporary worker program should include a mechanism for workers to “check out” upon departure. Such a system may also serve as a pilot program for broader exit tracking of other potentially high-risk overstay groups.

- ***Publish more and better data on low-skilled temporary foreign worker programs.*** At present, the Departments of Labor, Homeland Security and State collect useful data on the occupations, wages and work locations of workers in the various non-immigrant visa programs that authorize employment but publish only a small fraction of it. The limited public data that are available to policymakers and their staff, researchers and the general public, makes it nearly impossible for them to understand the impact the programs have on the U.S. labor market. The DHS Office of Immigration Statistics should collect and publish these data on an annual basis, so that Congress can make informed decisions about how to best manage temporary foreign worker flows in ways that discourage unauthorized immigration while protecting the interests of native workers.

***Worksite Enforcement:*** *Improvements to employment-based visas cannot succeed without more effective worksite enforcement.*

Ultimately, rules designed to protect the wages and working conditions of U.S. (and foreign) workers require effective worksite enforcement. One reason employers under-utilize the H-2A program is that it is unwieldy; arguably more important is the fact that they face almost no chance of being sanctioned for hiring an unauthorized worker, as noted earlier. Similarly, any effort to encourage employers to make a priority of hiring U.S. workers—whether in the form of recruitment requirements, higher visa fees or some other mechanism—is fundamentally limited by the ability of enforcement agencies to hold employers accountable for meeting such requirements.

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estimate is somewhat dated in light of recent improvements to border security, but no reliable estimate has been published since 2006.

<sup>63</sup> Calculation based on the total number of southern border entries (including trucks, bus passengers, passengers in private vehicles and pedestrians), January-December, 2014, according to U.S. Department of Transportation, Bureau of Transportation Statistics, “Border Crossing/Entry Data,” [http://transborder.bts.gov/programs/international/transborder/TBDR\\_BC/TBDR\\_BC\\_Index.html](http://transborder.bts.gov/programs/international/transborder/TBDR_BC/TBDR_BC_Index.html), accessed March 23, 2015.



Holding employers accountable must begin with a universal E-Verify system, along with additional improvements to combat its vulnerability to identity fraud. But even with a universal and accurate E-Verify system, effective enforcement will still require physical worksite inspections to guard against off-the-books employment and workers misclassified as independent contractors. In the absence of these capabilities, visa fees or other incentives for employers to favor U.S. workers are likely to be undermined by the availability of unauthorized workers.

In addition to immigration-related worksite enforcement, protection of U.S. workers requires more robust enforcement of U.S. labor law overall. The Labor Department's Wage and Hour Division, which administers and enforces the Fair Labor Standards Act, is severely understaffed. From 1997 to 2007 the number of Wage and Hour investigators decreased by more than 20 percent, from 942 in 1997 to 732 in 2007.<sup>64</sup> During the same time period the number of Wage and Hour enforcement actions decreased by over one-third, from approximately 47,000 actions in 1997 to fewer than 30,000 in 2007.<sup>65</sup> At present, the Wage and Hour Division is responsible for policing more than 7 million employers, but only has 1,000 investigators.<sup>66</sup> This insufficient oversight of wages and working conditions has extended to the current guest worker programs. For example, in 2013 the Labor Department certified more than 8,000 employer applications for H-2A workers but investigated and found only 270 H-2A violations.<sup>67</sup> Investigations of H-2B violations have been much lower than investigations of H-2A violations, consisting of only 6 percent of all employers investigated by the Wage and Hour Division from fiscal years 2009 through 2013.<sup>68</sup> In that same time period 250,685 H-2B visas were issued, but only 60 H-2B employers were investigated.<sup>69</sup> In order to improve compliance with temporary worker program requirements, appropriations for the Wage and Hour Division should be increased substantially from current levels. The Labor Department Inspector General has also found the department's use of suspension and debarment tools in administering the

<sup>64</sup> GAO, *Fair Labor Standards Act: Resources and Consistent Reporting Could Improve Compliance* (Washington, DC: GAO, 2008), [www.gao.gov/new.items/d08962t.pdf](http://www.gao.gov/new.items/d08962t.pdf).

<sup>65</sup> Ibid.

<sup>66</sup> U.S. Department of Labor, *FY 2015 Department of Labor Budget in Brief* (Washington, DC: Labor Department, 2014), <http://www.dol.gov/dol/budget/2015/PDF/FY2015BIB.pdf>.

<sup>67</sup> Office of Foreign Labor Certification, *Foreign Labor Certification Annual Report FY 2011* (Washington, DC: Office of Foreign Labor Certification, 2011), [www.foreignlaborcert.dhs.gov/pdf/2011AR\\_FINAL.pdf](http://www.foreignlaborcert.dhs.gov/pdf/2011AR_FINAL.pdf); Labor Department, Wage and Hour Division, *FY 2013 Congressional Budget Justification* (Washington, DC: Labor Department, Wage and Hour Division, 2013), [www.dol.gov/dol/budget/2013/PDF/CBJ-2013-V2-02.pdf](http://www.dol.gov/dol/budget/2013/PDF/CBJ-2013-V2-02.pdf).

<sup>68</sup> GAO, *H-2A and H-2B Visa Programs: Increased Protections Needed for Foreign Workers* (Washington, DC: GAO, 2015), 47-51, [www.gao.gov/assets/670/668875.pdf](http://www.gao.gov/assets/670/668875.pdf).

<sup>69</sup> Ibid, 47-8.

foreign labor certification programs to be insufficient,<sup>70</sup> which suggests an overly lenient approach has been taken toward program violators.

***The Limits of Low-Skilled Temporary Worker Programs:*** *Many current and future legal and unauthorized immigrants may not be good candidates for a temporary worker program, and the system also requires many additional reforms.*

While expanding and improving existing low-skilled temporary worker programs could divert certain unauthorized immigrants into legal channels, such programs cannot solve many other immigration policy challenges, and additional changes to the U.S. immigration system are also needed. First, temporary worker programs are not an appropriate solution for regularizing the status of existing unauthorized immigrants; immigration reform should include a broad legalization program for both practical and humanitarian reasons. With 7.6 million unauthorized immigrants already working across a variety of industries, the existing unauthorized workforce is simply too large and diverse to address through H-2 reforms—not to mention the 3.6 million unauthorized immigrants outside the labor force. The size and history of this population—890,000 children, 807,000 adults ages 55 and over, 4.2 million parents, 8.7 million people who have lived in the United States for five years or more—also rule out mass deportations as a real policy solution.<sup>71</sup> Yet the continued presence of millions of unauthorized immigrants jeopardizes all other efforts to fix the employment-based visa system by leaving in place the backbone of the underground economy, making legalization a fundamental component of any successful reform effort.

Lower-skilled employment-based visas also do not address numerous other shortcomings in the current visa system. Family-based visa backlogs, for example, now number 4.3 million people, as noted above. Many middle- and high-skilled employers also claim labor shortages. More generally, employment-based flows are only a fraction of the U.S. immigration system, and low-skilled immigrants a subset of employment-based flows; getting immigration policy right will involve far more than rethinking H-2 visas.

## Conclusion

The United States has been the world's leading immigration destination throughout its history, a quality that has been and remains one of the country's most important social

<sup>70</sup> Labor Department Office of the Inspector General, *Debarment Authority Should Be Used More Extensively in Foreign Labor Certification Programs* (Washington, DC: Labor Department Office of the Inspector General, 2010), [www.oig.dol.gov/public/reports/oa/2010/05-10-002-03-321.pdf](http://www.oig.dol.gov/public/reports/oa/2010/05-10-002-03-321.pdf).

<sup>71</sup> Calculations based on MPI, "Estimates of the Unauthorized Population: United States."

and economic assets. Immigration markets are dynamic, with millions of individuals who travel to better their lives. A well-designed U.S. immigration policy can be a powerful tool to shape and channel these flows to meet the country's economic needs and legally reunite relatives under the long-held primacy of family reunification in U.S. immigration law, as well as to promote immigrants' successful integration in this country.

Immigration enforcement policies will always be an essential component of a well-functioning immigration system—and enforcement has improved substantially in recent years—but the historical record shows that policy choices about the legal immigration system are at least as important: how many may enter, based on what criteria and under what conditions? As long as immigration policy fails to offer answers to these questions that match the economic and demographic realities of today—and tomorrow—our efforts to secure the border and control immigration flows will remain expensive and much less effective than they need to be. Sensible reforms to the employment-based visa system that introduce flexibility to visa numbers and workers' career paths, improve worker recruitment and protect worker rights should be high priorities for Congress and for the nation.

## Estimates of Unauthorized Immigrants in the Total Population, Labor Force and Foreign-Born Population, by State, 2012

TABLE A3

### Estimates of Unauthorized Immigrants in the Total Population, Labor Force and Foreign-Born Population, by State, 2012

In thousands (unless otherwise specified)

|                      | Population |                                                                 |     | Labor Force |                                                               |     | Foreign Born |                                |                                                 |
|----------------------|------------|-----------------------------------------------------------------|-----|-------------|---------------------------------------------------------------|-----|--------------|--------------------------------|-------------------------------------------------|
|                      | Total      | Unauthorized<br>Immigrants<br>% of Total<br>Estimate Population |     | Total       | Unauthorized<br>Immigrants<br>% of Labor<br>Force<br>Estimate |     | Total        | % Foreign-<br>born of<br>State | % Unauthorized<br>of Foreign-born<br>Population |
| Total U.S.           | 315,920    | 11,200                                                          | 3.5 | 158,980     | 8,100                                                         | 5.1 | 42,500       | 13.5                           | 26                                              |
| Alabama              | 4,840      | 65                                                              | 1.4 | 2,240       | 45                                                            | 2.0 | 170          | 3.6                            | 38                                              |
| Alaska               | 730        | 15                                                              | 1.8 | 380         | 10                                                            | 2.4 | 50           | 7.0                            | 25                                              |
| Arizona              | 6,590      | 300                                                             | 4.6 | 3,070       | 180                                                           | 6.0 | 925          | 13.9                           | 33                                              |
| Arkansas             | 2,960      | 60                                                              | 2.1 | 1,380       | 45                                                            | 3.2 | 140          | 4.7                            | 45                                              |
| California           | 38,340     | 2,450                                                           | 6.3 | 19,090      | 1,800                                                         | 9.4 | 10,500       | 27.5                           | 23                                              |
| Colorado             | 5,220      | 180                                                             | 3.5 | 2,800       | 130                                                           | 4.7 | 525          | 10.3                           | 34                                              |
| Connecticut          | 3,610      | 130                                                             | 3.5 | 1,970       | 100                                                           | 5.1 | 500          | 14.1                           | 25                                              |
| Delaware             | 920        | 20                                                              | 2.4 | 470         | 20                                                            | 3.8 | 85           | 9.1                            | 26                                              |
| District of Columbia | 640        | 20                                                              | 3.1 | 370         | 15                                                            | 4.1 | 100          | 15.4                           | 20                                              |
| Florida              | 19,480     | 925                                                             | 4.8 | 9,460       | 650                                                           | 6.9 | 3,900        | 20.0                           | 24                                              |
| Georgia              | 9,980      | 400                                                             | 3.9 | 4,810       | 275                                                           | 5.6 | 1,000        | 10.0                           | 39                                              |
| Hawaii               | 1,400      | 35                                                              | 2.4 | 700         | 25                                                            | 3.7 | 250          | 18.4                           | 13                                              |
| Idaho                | 1,610      | 50                                                              | 3.0 | 780         | 35                                                            | 4.6 | 110          | 6.9                            | 43                                              |
| Illinois             | 12,690     | 475                                                             | 3.7 | 6,720       | 350                                                           | 5.2 | 1,800        | 13.9                           | 26                                              |
| Indiana              | 6,560      | 85                                                              | 1.3 | 3,300       | 60                                                            | 1.9 | 325          | 4.9                            | 27                                              |
| Iowa                 | 3,090      | 40                                                              | 1.4 | 1,650       | 30                                                            | 2.0 | 140          | 4.6                            | 30                                              |
| Kansas               | 2,890      | 75                                                              | 2.6 | 1,490       | 50                                                            | 3.5 | 190          | 6.7                            | 38                                              |
| Kentucky             | 4,390      | 35                                                              | 0.8 | 2,070       | 25                                                            | 1.2 | 140          | 3.2                            | 26                                              |
| Louisiana            | 4,610      | 55                                                              | 1.2 | 2,200       | 40                                                            | 1.8 | 170          | 3.8                            | 31                                              |
| Maine                | 1,330      | <5                                                              | 0.2 | 700         | <5                                                            | 0.3 | 45           | 3.5                            | 6                                               |
| Maryland             | 5,940      | 250                                                             | 4.3 | 3,260       | 200                                                           | 6.2 | 875          | 14.8                           | 29                                              |
| Massachusetts        | 6,700      | 150                                                             | 2.3 | 3,680       | 120                                                           | 3.4 | 1,050        | 15.8                           | 15                                              |
| Michigan             | 9,950      | 120                                                             | 1.2 | 4,860       | 75                                                            | 1.6 | 675          | 6.7                            | 18                                              |
| Minnesota            | 5,410      | 95                                                              | 1.8 | 3,000       | 75                                                            | 2.5 | 425          | 7.9                            | 22                                              |
| Mississippi          | 2,990      | 25                                                              | 0.9 | 1,350       | 15                                                            | 1.2 | 60           | 2.0                            | 44                                              |

Continued on next page

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# Estimates of Unauthorized Immigrants in the Total Population, Labor Force and Foreign-Born Population, by State, 2012

TABLE A3 (continued)

## Estimates of Unauthorized Immigrants in the Total Population, Labor Force and Foreign-Born Population, by State, 2012

In thousands (unless otherwise specified)

|                | Population |              |            | Labor Force |              |                  | Foreign Born |                         |                                           |
|----------------|------------|--------------|------------|-------------|--------------|------------------|--------------|-------------------------|-------------------------------------------|
|                | Total      | Unauthorized | % of Total | Total       | Unauthorized | % of Labor Force | Total        | % Foreign-born of State | % Unauthorized of Foreign-born Population |
|                |            | Immigrants   |            |             | Immigrants   |                  |              |                         |                                           |
|                |            | Estimate     | Population |             | Estimate     | Force            |              |                         |                                           |
| Missouri       | 6,040      | 65           | 1.1        | 3,020       | 45           | 1.4              | 240          | 4.0                     | 27                                        |
| Montana        | 1,010      | <5           | 0.3        | 520         | <5           | 0.4              | 20           | 1.9                     | 14                                        |
| Nebraska       | 1,860      | 55           | 2.8        | 1,020       | 40           | 3.7              | 130          | 6.9                     | 41                                        |
| Nevada         | 2,780      | 210          | 7.6        | 1,420       | 150          | 10.2             | 550          | 19.7                    | 39                                        |
| New Hampshire  | 1,330      | 10           | 0.9        | 740         | 10           | 1.2              | 80           | 6.0                     | 15                                        |
| New Jersey     | 9,010      | 525          | 5.8        | 4,770       | 400          | 8.2              | 2,000        | 22.3                    | 26                                        |
| New Mexico     | 2,100      | 70           | 3.4        | 980         | 45           | 4.7              | 200          | 9.7                     | 35                                        |
| New York       | 19,680     | 750          | 3.8        | 10,120      | 575          | 5.7              | 4,550        | 23.1                    | 16                                        |
| North Carolina | 9,810      | 350          | 3.6        | 4,820       | 250          | 5.2              | 800          | 8.2                     | 44                                        |
| North Dakota   | 700        | <5           | 0.3        | 390         | <5           | 0.5              | 20           | 3.0                     | 10                                        |
| Ohio           | 11,580     | 95           | 0.8        | 5,820       | 65           | 1.1              | 475          | 4.1                     | 20                                        |
| Oklahoma       | 3,830      | 100          | 2.6        | 1,830       | 65           | 3.7              | 230          | 5.9                     | 43                                        |
| Oregon         | 3,920      | 120          | 3.1        | 1,960       | 90           | 4.6              | 400          | 10.0                    | 31                                        |
| Pennsylvania   | 12,810     | 170          | 1.3        | 6,550       | 110          | 1.7              | 800          | 6.3                     | 21                                        |
| Rhode Island   | 1,060      | 35           | 3.3        | 570         | 25           | 4.6              | 150          | 13.9                    | 23                                        |
| South Carolina | 4,740      | 95           | 2.0        | 2,280       | 70           | 3.0              | 240          | 5.0                     | 41                                        |
| South Dakota   | 830        | <5           | 0.4        | 450         | <5           | 0.6              | 25           | 2.8                     | 14                                        |
| Tennessee      | 6,500      | 130          | 2.0        | 3,140       | 90           | 2.8              | 325          | 5.0                     | 40                                        |
| Texas          | 26,390     | 1,650        | 6.3        | 12,960      | 1,150        | 8.9              | 4,500        | 17.1                    | 37                                        |
| Utah           | 2,870      | 100          | 3.6        | 1,420       | 70           | 5.1              | 250          | 8.8                     | 41                                        |
| Vermont        | 630        | <5           | 0.4        | 350         | <5           | 0.5              | 25           | 4.3                     | 9                                         |
| Virginia       | 8,250      | 275          | 3.5        | 4,280       | 220          | 5.1              | 1,000        | 12.2                    | 28                                        |
| Washington     | 6,950      | 230          | 3.3        | 3,540       | 170          | 4.9              | 975          | 13.9                    | 24                                        |
| West Virginia  | 1,860      | <5           | 0.2        | 820         | <5           | 0.2              | 30           | 1.5                     | 13                                        |
| Wisconsin      | 5,740      | 85           | 1.5        | 3,070       | 55           | 1.8              | 275          | 4.9                     | 30                                        |
| Wyoming        | 580        | 5            | 1.0        | 310         | <5           | 1.3              | 20           | 3.1                     | 31                                        |

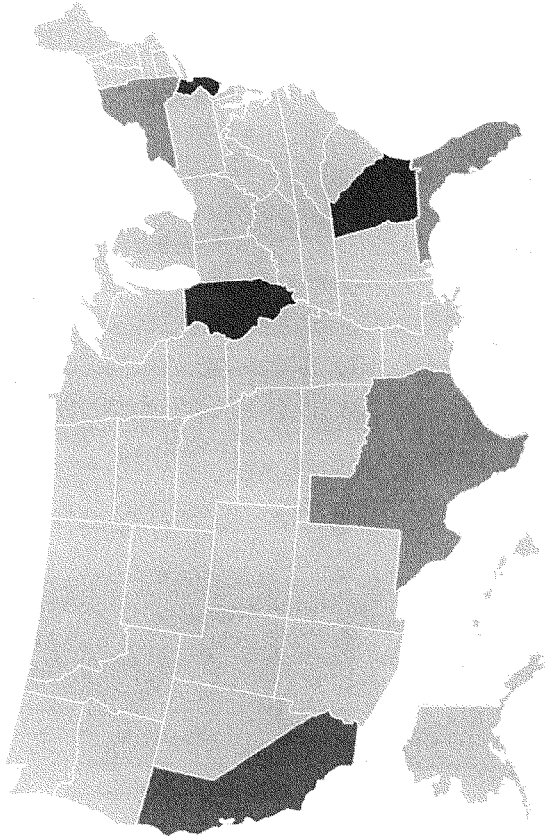
Note: All numbers are rounded independently and are not adjusted to sum to the total U.S. figure or other totals. Percentages calculated from unrounded numbers. See Methodology for rounding rules.

Source: Pew Research Center estimates based on augmented 2012 American Community Survey data from Integrated Public Use Microdata Series (IPUMS).

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TOP ILLEGAL POPULATIONS BY STATE

| State      | Population |
|------------|------------|
| California | 2,450,000  |
| Texas      | 1,650,000  |
| Florida    | 925,000    |
| New York   | 750,000    |
| New Jersey | 525,000    |
| Illinois   | 475,000    |
| Georgia    | 400,000    |



Pew Hispanic Center, using American Community Survey data (2012 (

AFL-CIO Statement for the Record

Hearing on the  
**"Securing the Border: Defining the Current Population Living in the Shadows and  
Addressing Future Flows"**

Before the  
Senate Homeland Security and Government Affairs Committee  
March 26, 2015

Chairman Johnson, Ranking Member Carper and members of the committee.

The AFL-CIO is a federation of 56 unions that represents 12.5 million working men and women. We strive to ensure that every person who works in this country receives decent pay, good benefits, safe working conditions, and fair treatment on the job.

The rules are rigged against working families, and our unjust immigration system is one of the many forces making it harder for them to get ahead. We know that real immigration reform is an important part of the larger structural change that needs to happen to once again create an economy where wages grow and where the wealth we produce is shared fairly; an economy that protects workers and favors democracy in the workplace.

For far too long, our rigged immigration system has allowed employers to drive down wages and working conditions in our country. The brunt of the impact has been borne by immigrant workers, who face the highest rates of wage theft, sexual harassment, and death and injury on the job. But our entire workforce suffers when we allow standards to erode as millions of workers struggle to support their families without the status to assert their rights.

When employers can hire undocumented workers with a wink and a nod and then fire them when they seek to organize a union or complain about unpaid wages or unsafe working conditions, it is not just undocumented workers who are hurt, but all workers. And when employers like Southern California Edison (SCE) can replace hundreds of steady middle class jobs with captive guest workers who earn a fraction of the wage for the same work, then we know that our broken immigration system is facilitating a race to the bottom.

Recognition of these concerns brought the labor movement together in 2009 around a shared set of principles that would create a different sort of immigration system—one that promotes shared prosperity and shared values of dignity, fairness, opportunity, voice and justice. That framework guided our participation in historic negotiations with the business community and paved the way for the bipartisan comprehensive immigration reform bill passed by the Senate in 2013.

The Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744) demonstrated that a comprehensive approach is possible when lawmakers take seriously their obligation to solve problems. While far from perfect, the bill created a broad and inclusive

pathway to citizenship, strengthened protections for workers and devised a new type of employment-based visa system tied to real labor market needs, not the whims of employers. In addition to being the right thing to do, the Congressional Budget Office projected that, over time, the reforms would net billions in new revenues, substantially reduce the deficit and raise the wages for our entire workforce.

Labor's unity framework for immigration reform includes five carefully balanced and inter-connected components, so we do not support a piecemeal approach to immigration—particularly one that does not include a pathway to citizenship for the 11 million.

Today we ask you to commit to work with us to support the type of real immigration reform that can help build a stronger economic future for our nation and support the basic civil and human rights and dignity of all workers, rather than providing yet another nod to corporate interests. But expanding captive guest worker programs is not the way to do it.

The insatiable employer demand for more guest worker visas says more about what is wrong with our economy than about the most urgent problems with our immigration system. At a time when we face unprecedented levels of inequality and decades of wage stagnation, it is irresponsible to expand access to employment-based temporary work programs that will continue to hold down wages, increase worker vulnerability, and reduce social mobility for deserving workers.

As we have said repeatedly, Congress must consider legislation to reform guest worker programs rather than expand them, and the law should unambiguously state that it is illegal to replace a U.S. worker with a guest worker under any circumstances, whether directly or through secondary displacement—and there should be no cheap and easy exemptions permitted, as there are now.

Unfortunately, evidence of the abuses and wage suppression that pervade our vast employment-based visa system continues to mount:

- The recent SCE scandal highlights blatant displacement using the H-1B program to undercut local wages by more than \$30,000 per worker. Not only were local workers fired, they were forced to train their H-1B replacement and sign non-disparagement agreements as a condition of their severance packages.
- Electronics for Imaging brought intercompany transferees to California through the L-1 program and paid them an outrageous \$1.21 per hour, purportedly the same rate they earned in rupees in India, rather than the local market rate of \$19-45 per hour.
- The H-2B program has now been halted due to legal challenges brought by employers who did not want to submit to the common-sense wage and local recruitment requirements issued by the Department of Labor, and instead asserted that DOL lacked authority to regulate the terms of the seasonal work program.

Numerous official investigations have documented that violations are not isolated, and indeed are consistently experienced throughout the guest worker system. Considering the overwhelming evidence of problems, a comprehensive review of wage rates and hiring practices across all employment-based visa programs seems clearly warranted, and we urge Congress to



call for such a review in order to shed light on the way in which these programs are being used by employers. A basic premise of that review should be that no employment-based program should lack prevailing wage regulations, and that all visa programs that put workers into the labor market should be regulated as work programs and not disguised as exchanges, internships, or student programs.

In addition, we should not lose sight of the important new model that was pioneered with the W Visa. This hard-negotiated framework created a research bureau that would work to ensure that future flows of workers into our communities are responsive to the real needs of the labor market and aligned with actual market wage rates. The W program also would have turned the captive work structure of the dominant U.S. guest worker programs on their head by ensuring that the workers would have a degree of control over their own visas, rather than being entirely controlled by employers, and that the workers would also have a pathway to stay in the country if they desired to do so and were able to meet certain minimum requirements. Temporary work visa programs have historically been structured to disempower both American workers and those being recruited from abroad. The W model offers a rights-based and data-centered alternative which should be brought to fruition.

#### Conclusion

We need immigration reform—not just for immigrants’ rights, but for the rights of all working people. Those reforms must be based on the premise that we can build an immigration system that helps to lift all boats, rather than exacerbating the vulnerabilities that workers already feel in our increasingly precarious labor market.

The ability to exploit any worker lowers standards for all workers, and the AFL-CIO insists that strengthening worker protections is essential to reforming our immigration system and getting our economy back on track. That means that we must defend and expand the rights of all workers, regardless of immigration status, including the right to organize, the right to a living wage, the right to overtime, the right to equal pay, and the right to bargain to raise our wages.

We must also fight for economic policies that put full employment and wages that rise with productivity ahead of corporate profits. An economy built on wage suppression, radical inequality and racial exclusion does not work. It produces weak growth, financial crises, and political instability. But there is another path—one that will restore rights and produce broadly shared prosperity. We *can* build a system where workers’ wages rise as we create more wealth, and implementing reforms that create a fair and just immigration system that adds value to our economy is a necessary component for creating a level playing field—rather than one that’s used to degrade wages and working conditions—for immigrant and American workers alike.



**Written Statement of Farmworker Justice**  
**Submitted to the Senate Homeland Security and Governmental Affairs Committee**  
**Hearing on “Securing the Border: Defining the Current Population Living in the**  
**Shadows and Addressing Future Flows”**  
**March 26, 2015**

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Farmworker Justice submits this statement for inclusion in the record of the March 26, 2015 Senate Homeland Security and Governmental Affairs Committee Hearing on “Securing the Border: Defining the Current Population Living in the Shadows and Addressing Future Flows.” For over thirty years, Farmworker Justice has engaged in policy analysis, education and training, advocacy and litigation to empower farmworkers to improve their wages and working conditions, immigration status, health, occupational safety and access to justice. Since its inception, Farmworker Justice has played an important role in immigration policy discussions, monitored the H-2A agricultural guestworker program throughout the country and helped farmworker organizations participate in policy debates.

Farmworker Justice has monitored and engaged in advocacy and litigation on behalf of domestic and foreign workers under the H-2A program and its predecessor. Farmworker Justice’s staff have testified in Congress regarding the H-2A program’s operations and has published reports on the program, including the 2011 report, *No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers*. Our organization seeks to ensure that the operation of the H-2A temporary agricultural guestworker program complies with the statutory mandate of ensuring that U.S. workers are not displaced and do not suffer adverse effects in wages or working conditions due to the employment of H-2A workers. We also advocate for H-2A workers to receive the wages, benefits and other protections provided for in the law and regulations.

**The need for immigration reform is acute in farmworker communities.** Our nation’s broken immigration system, labor laws that discriminate against farmworkers, and the labor practices of many agricultural employers have combined to create an agricultural labor system that is unsustainable and fundamentally unfair to the farmworkers who harvest our food. There are an estimated 2.4 million farmworkers laboring on our farms and ranches to bring food to our tables.<sup>1</sup> Estimates indicate that at

<sup>1</sup> Philip Martin *California Ag Employment: 2014* <http://migrationfiles.ucdavis.edu/uploads/cf/files/2014/04/22/martin-california-ag-employment-2014.pdf> (last visited July 16, 2014).

least one-half of farmworkers are undocumented immigrants.<sup>2</sup> Many family members of farmworkers also are undocumented.

Undocumented workers' fear of deportation deprives them of bargaining power with their employers and inhibits them from challenging illegal employment practices. The presence of so many vulnerable farmworkers depresses wages and working conditions for all farmworkers, including the roughly 720,000 to 1.25 million United States citizens and lawful immigrants in agriculture.<sup>3</sup> U.S. farmworkers recognize that they can easily be fired and replaced by more exploitable workers if they speak up for their rights. Poverty among farmworkers is more than double that experienced by other wage and salary workers.<sup>4</sup> According to 2011-12 data from the U.S. Department of Labor's National Agricultural Workers Survey ("NAWS"), the average total individual income of farmworkers is \$15,000-\$17,499.<sup>5</sup> The average farmworker family's total income is \$17,500- \$19,999. The federal poverty level for a family of 3 is \$19,790. Twenty-five percent of all farmworkers surveyed in 2011-12 had a family income below the federal poverty line. The broken immigration system inflicts harm on farmworkers, their family members, their communities, and the businesses that need their labor.

US farmworkers are aware of the impact that a majority undocumented workforce has on conditions in the fields. In the words of one Texas farmworker,

*[w]orking in the fields is very hard but it has taught [me] a lot of lessons on life. Sometimes I want to complain so bad, especially when it is raining and we are out there in the mud that makes our boots very heavy to walk in or when the rain has ceased and the sun comes out evaporating the rain making it so hard to breathe that you think you are going to faint. Then I remember those people that work with us but do not have documents. They have to do all this too but they are made to work longer hours and get paid less than us. Life as a farm worker is so hard but it is something we are always willing to do.*

Such poor conditions and discriminatory laws have resulted in substantial employee turnover. In the absence of an immigration system that functions sensibly to control our borders and to provide immigration visas when workers are needed, most of the newly hired farmworkers have been undocumented. The sensible, rational and moral solutions to stabilize the farm labor force include ending discrimination in labor laws, improving wages and working conditions for farmworkers, and creating an opportunity for undocumented farmworkers to earn legal immigration status and eventual citizenship.

<sup>2</sup> The National Agricultural Worker Survey public access data (hereinafter "NAWS" or "NAWS data"), FY 2011-2012, <http://www.doleta.gov/agworker/naaws.cfm> (last visited July 14, 2014).

<sup>3</sup> According to NAWS, about 33% of farmworkers are citizens, 18% are lawful permanent residents and another 1% have other work authorization. 52% of the total workforce of 2.4 million is about 1.25 million. Even assuming the percentage of undocumented farmworkers approaches 70%, there would still be roughly 720,000 U.S. farmworkers.

<sup>4</sup> See Kandel, W. Profile of Hired Farmworkers, A 2008 Update, United States Department of Agriculture, Economic Research Report, No. 60, July 2008. Available at <http://www.ers.usda.gov/Publications/ERR60/>.

<sup>5</sup> The average does not include individuals who had no income for the year being surveyed. This figure includes income that some farmworkers earn from jobs outside agriculture.

We applaud President Obama for taking action to address our broken immigration system. The President's deferred action programs will allow hundreds of thousands of qualifying farmworkers and millions of other aspiring Americans to come forward, submit to background checks and properly document themselves with the federal government and in their workplaces. As many as 780,000 farmworkers and family members may be eligible for the deferred action programs. Even as we celebrate with those who will be eligible for relief, we are disappointed at the limits of the program. The eligibility criteria will deny administrative relief to many deserving farmworkers and their family members, including many long-time farmworkers who do not have U.S. citizen children. Moreover, the relief is only temporary. Only Congress can create an opportunity for undocumented farmworkers, their family members and the rest of the 11 million to obtain permanent immigration status and an opportunity for citizenship.

### **The H-2A Agricultural Guestworker Program**

In addition to the farmworker population of US and undocumented workers, a small but growing share of the farmworker population are workers coming to the United States under the H-2A agricultural guestworker program. The H-2A agricultural worker program is a foreign labor certification program that permits agricultural employers who anticipate a labor shortage to apply to hire workers from other countries on temporary work permits to fill agricultural jobs that last ten months or less. To bring in H-2A guestworkers, employers must first show that they have tried and are unable to find U.S. workers to meet their labor needs. They must also demonstrate that bringing in guestworkers won't adversely impact the wages and working conditions of US workers.

**Growth in the H-2A program:** The H-2A program has no limit on the number of H-2A visas that can be issued per year. Despite the complaints of many agricultural employers, the H-2A program is available to them and is used by many growers to expand their business. Ignoring the Department of Labor's successes in providing H-2A workers to growers, many growers that assert a shortage of U.S. workers complain about the program or choose not to use the H-2A program because it involves government oversight and modest labor protections. Some of these growers have engaged in lobbying efforts to reduce wages, government oversight and program protections.

In reality, the H-2A program has been accessible to growers and its use is growing rapidly. The H-2A program offers agricultural employers an unlimited number of visas each year to bring in temporary foreign workers to perform agricultural work. The program has more than doubled in size in recent years: from about 48,000 worker positions certified in FY 2005 to about 117,000 worker positions certified in FY 2014—an increase of over 140%. From FY 2013 to FY 2014, several states saw significantly large increases in program usage, including an increase of 17% in North Carolina, 35% in Florida, 44% in California, and 45% in Washington.

Typically employer complaints about H-2A program “bureaucracy” reflect a dislike of DOL's oversight and the program's modest wages and protections that are critically important in protecting U.S. workers' jobs and labor standards. DOL, in fact, continues to approve an overwhelming majority of grower applications, with approximately 96% of all applications approved in FY 2014.<sup>6</sup>

<sup>6</sup> U.S. Department of Labor, Office of Foreign Labor Certification, Foreign Labor Certification Performance Reports available at: <http://www.foreignlaborcert.doleta.gov/>.

Growers often complain that they do not receive their H-2A workers in a timely manner.<sup>7</sup> Many growers argue that the solution is to “streamline” DOL’s labor certification process, which would reduce DOL oversight and strip away some of the worker protections in the program. In fact, the DOL processes applications in a relatively timely manner, especially given the short timeframe in which it must adjudicate the applications.<sup>8</sup> DOL data indicates that in FY2014, it issued final decisions on complete applications in a timely manner in 90.8% of applications, a significant improvement over FY2013 when only 68.8% of applications were processed timely.<sup>9</sup>

In many instances, timeliness problems are a result of employer failure to file needed paperwork or to timely respond to DOL requests. Some employers and their agents try to test the outer limits of what DOL will accept as job terms, which can slow down the application process. For example, when employers add experience requirements to job orders in an effort to avoid hiring US workers, DOL may have to wait for the State Workforce Agency to conduct an *ad hoc* survey of other agricultural employers in the area of intended employment. Still, it appears that while DOL has made efforts to increase efficiency, particularly through electronic transmission of applications and communications with employers, resources remain a factor in DOL’s timeliness in processing H-2A labor certification applications.

To address employers’ timeliness concerns and DOL’s limited resources in overseeing the H-2A program, DOL should increase the fees that it charges employers for H-2A labor certification. Fees should be set to recover the true cost of the H-2A program. By statute, the Secretary of Labor may set reasonable fees to cover the cost of processing applications for labor certification.<sup>10</sup> Currently, DOL charges \$100 for the application for temporary labor certification plus \$10 for each worker, but the total fee for the application may not exceed \$1,000.<sup>11</sup> These fees have never been raised since the inception of the H-2A program.<sup>12</sup>

#### Abuse in the H-2A Program

Despite the H-2A program’s modest wage and labor protections for U.S. and foreign workers, the program is rampant with abuse, as revealed in numerous exposés and the Farmworker Justice report, *No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers*.<sup>13</sup> The H-2A program’s worker protections, which were originally established under President

<sup>7</sup> For purposes of the timeliness issue, we limit our comments to the DOL labor certification process. Growers tend to publicly place most of the blame for H-2A delays on DOL. However, some of the delays are due to USCIS, border patrol or consular processing issues.

<sup>8</sup> The short timeline is important to test the labor market close to the date of need for the H-2A workers. If employers were allowed to recruit US workers too far in advance of the start date of work, workers who may actually be available at that time may not yet be looking for work.

<sup>9</sup> In quarter 2 of the fiscal year, DOL tends to process the highest number of applications and correspondingly, have the lowest timeliness rate. In quarter 2 of FY2014, DOL processed 84.3% of the applications on time, with almost double the number of applications compared to the next highest volume quarter.

<sup>10</sup> 8 U.S.C. 1188(a)(2).

<sup>11</sup> 20 C.F.R. § 655.163.

<sup>12</sup> Appendix I of ETA Handbook No. 398, Field Memorandum No 73-87 (July 23, 1987).

<sup>13</sup> Farmworker Justice, *No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers*, available at <http://www.farmworkerjustice.org/resources/reports>.

Reagan and are rooted in the remedies adopted to reduce abuses in the Bracero program of 1943-64, are too weak and inadequately enforced.

Once employers invest in the H-2A program, the H-2A program's structural flaws create a system in which many employers prefer guestworkers over U.S. workers. H-2A workers typically pay recruitment fees for the opportunity to work in the United States and therefore arrive indebted and desperate to work to repay their debt.<sup>14</sup> As a result, they will often work to the limits of human endurance to keep their employers happy with their performance and are reluctant to complain about illegal working conditions. They are tied to an employer for an entire season, and must leave the country when the job ends, factors which make workers extremely vulnerable to abuse. Workers also fear being blacklisted the following year, adding to their reticence to complain about working conditions or labor violations. Additionally, H-2A employers do not pay Social Security or unemployment taxes on the guestworkers' wages, but must do so on the US workers' wages, which creates another incentive to avoid hiring US workers. H-2A workers also are excluded from the principal federal employment law for farmworkers, the Agricultural Worker Protection Act. Finally, employers are able to handpick their H-2A workers—they are virtually all young men—often resulting in discrimination hiring against US women and older farmworkers.

Reports from farmworker advocates on the ground indicate that US workers who seek H-2A employment are often turned away in the application process or terminated or forced to quit within the first few days on the job as a result of unfair and possibly discriminatory treatment in the workplace. A recent example includes allegations at vineyard in Washington, where local applicants were told that there were no jobs available and already employed domestic workers had their hours cut in advance of the arrival of H-2A workers and were not paid the H-2A wages as required by law. There have also been repeated complaints filed with the EEOC in Georgia by Black workers who have been subject to different and less favorable workplace rules than the H-2A workers and were fired under false pretenses because the employers preferred Mexican H-2A workers.

Many other US workers don't apply for H-2A jobs because they think that H-2A employers won't hire them, either because of past experience or rumors that this is the case. Workers may face obstacles applying for H-2A jobs. Some workers are never informed about H-2A jobs by the state workforce agency because the staff knows the employer just wants to hire H-2A workers. Some employers place job requirements in the job order—used to recruit US workers—that are intended to disqualify or discourage US farmworkers from applying. For example, job orders may require a set number of months of experience working in a specific crop meaning that a farmworker who had years of experience harvesting crops may still not meet the job requirements. Job orders may also include reference requirements, drug testing and criminal background checks. A further problem with many of these job requirements is that it is doubtful that H-2A workers are being held to the same standards.

### **Meaningful Immigration Reform is Needed**

<sup>14</sup> See GAO Report, *H-2A and H-2B Visa Programs: Increased Protections Needed for Foreign Workers*, (March 2015). GAO found that abuses experienced during recruitment may increase a worker's likelihood of tolerating further abuse during employment due to their indebtedness from having paid recruitment fees. The report notes that borrowing money at high interest rates can result in debt bondage, which is a possible indicator of human trafficking.

Some argue that the solution for agriculture is to create a new agricultural guestworker program with lower wages, weaker worker protections and more limited government oversight than exist in the current H-2A temporary agricultural guestworker program. These efforts have repeatedly failed, however, due to a recognition that one-sided exploitative guestworker reform is not a solution to agriculture's needs and not an approach reflecting our nation's values.

The H-2A program should not be made any worse by reducing government oversight, lowering wage rates and removing labor protections. Moreover, it makes no sense to bring in hundreds of thousands of new guestworkers – under either the H-2A program or a new guestworker program – when there are already over a million undocumented farmworkers, in addition to citizens and documented immigrants, performing agricultural work productively and contributing to our communities. Further, large-scale guestworker programs are anathema to American values of freedom and democracy. A practical, meaningful, fair solution to our broken immigration system has to include an opportunity for our current workforce to earn immigration status. Providing access to cheap guestworker programs will not solve the current challenge in the agricultural labor market: that a majority of the workforce is undocumented. Demands by some employer groups for exploitative guestworker programs should be rejected.

Congress should pass comprehensive immigration reform that includes an opportunity for undocumented farmworkers, their family members and the rest of the 11 million to obtain permanent immigration status and an opportunity for citizenship. Immigration legislation must recognize and respect the contributions of aspiring Americans to our society and economy.



### **The H-2A Temporary Agricultural Guestworker Program: An Inherently Flawed Program**

The H-2A agricultural worker program is a foreign labor certification program that permits agricultural employers who anticipate a labor shortage to apply to hire workers from other countries on temporary work permits to fill agricultural jobs that last ten months or less. To bring in H-2A guestworkers, employers must first show that they have tried and are unable to find U.S. workers to meet their labor needs. They must also show that bringing in guestworkers won't adversely impact the wages and working conditions of US workers. There is no cap on the number of visas that the government will grant in a year.

Although the H-2A program includes some basic requirements to protect U.S. workers from negative effects on their wages and working conditions, as well as to protect foreign workers from exploitation, it fails to protect these vulnerable workers. The modest H-2A protections, most of which date back to the Reagan Administration, can be traced to lessons learned from the notoriously abusive Bracero guestworker program. Even with these protections, violations of the rights of U.S. workers and guest workers by H-2A program employers are rampant and systemic. **The H-2A program contains the following protections:**

1. **Wages** must be at least the higher of: (a) the local "prevailing wage;" (b) the state or federal minimum wage, (c) the agreed-upon collective bargaining rate; or (d) the "adverse effect wage rate" (AEWR), which is the average wage of nonsupervisory field and livestock workers as determined by a USDA survey.
2. **Recruitment** obligations require employers to use the Interstate Employment Service system and private-market methods, known as "**positive recruitment**," to locate U.S. workers.
3. The "**fifty percent rule**" is the principal job preference mechanism for U.S. workers. It requires H-2A employers to hire any qualified U.S. worker who applies for work until one-half the season has ended. Due to the nature of seasonal work, many farmworkers arrive after the first day of the season, and many farms do not need their full labor force until later in the season.
4. The **three-fourths minimum work guarantee** requires that employers provide recruited workers with employment opportunities for at least three-quarters of the number of hours in the job offer or pay for any shortfall (with exceptions for Acts of God). This provision protects against over-recruitment designed to drive down wages and assures migrants who travel long-distances that the job will be worth the trip.
5. Workers who complete half the season at an H-2A program employer must be reimbursed for the **transportation and subsistence costs** associated with traveling to the place of employment. Those who complete the full season must be paid for their transportation costs of returning home.
6. H-2A employers must provide **housing** for their workers at no cost to the worker. The housing must meet federal and state safety standards.
7. Employers soliciting H-2A workers must provide **workers' compensation insurance** for occupational injuries (but not health insurance coverage).
8. Prohibition on **recruitment fees**

**The H-2A program is rife with abuse and results in discrimination against US workers.** Despite the H-2A program's modest wage and labor protections for U.S. and foreign workers, the program is



rampant with abuse, as revealed in numerous exposés and the Farmworker Justice report, *No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers*. Social and geographic isolation, lower than advertised wages, less work than promised, dirty and dilapidated housing, dangerous working conditions, and even forced labor or slavery typify the experience of many guestworkers.

The program's inherent flaws also result in employer preference for H-2A workers over US workers. Hundreds of thousands of US citizens and lawful permanent residents work in agriculture and depend on these jobs. Once employers invest in the H-2A program, however, many US workers interested in the jobs are turned away or otherwise treated unfavorably in the workplace because U.S. workers are often viewed as insufficiently compliant compared to the H-2A workforce. H-2A workers typically arrive indebted, having paid illegal recruitment fees to secure their jobs; are tied to an employer for an entire season; and must leave the country when the job ends, all of which make the workers desperate to keep their employers happy and extremely vulnerable to abuse. Further, H-2A workers never earn the opportunity to become permanent legal immigrants no matter how many seasons they work here. Additionally, H-2A employers do not pay Social Security or unemployment taxes on the guestworkers' wages, but must do so on the US workers' wages, which creates another incentive to avoid hiring US workers. H-2A workers also are excluded from the principal federal employment law for farmworkers, the Migrant and Seasonal Agricultural Worker Protection Act. Finally, employers are able to handpick their H-2A workers—they are virtually all young men—often resulting in discrimination in hiring against US women and older farmworkers.

An example of H-2A employer's preference for H-2A workers over domestic workers is the 2011 Equal Employment Opportunity Commission [lawsuit](#) against the Georgia grower Hamilton Growers, Inc. The EEOC found that the company engaged in national origin discrimination against American workers, which included firing US workers while retaining Mexican H-2A workers, assigning the US workers to less favorable job assignments, and assigning them tasks where they earned less money.

**The H-2A program is growing every year.** The H-2A program has no limit on the number of H-2A visas that can be issued per year. Despite many employer complaints about the H-2A program and the DOL, the program has more than doubled in size in recent years: from about 48,000 worker positions certified in FY 2005 to about 117,000 worker positions certified in FY 2014—an increase of over 140%. From FY 2013 to FY 2014, several states saw significantly large increases in program usage, including an increase of 17% in North Carolina, 35% in Florida, 44% in California, and 45% in Washington.

Farmworker Justice opposes any changes to the H-2A program rules that would lower wages or reduce worker protections for H-2A workers and domestic workers in corresponding employment. The solution to our agriculture labor needs is comprehensive immigration reform that provides a path to citizenship for the 11 million undocumented immigrants in the US that includes farmworkers and their families. If future farmworkers from abroad are needed, they and their family members must be afforded stronger protections and should have a meaningful opportunity to become immigrants and citizens. An above-board agricultural labor relations system will lead to better working conditions, less employee turnover and higher productivity, all of which will help ensure a prosperous agricultural sector. The entire food system will benefit by responding to consumers' increasing interest in the conditions under which their fruits and vegetables are produced. The people who cultivate and harvest our fruits and vegetables should not be deprived of our nation's economic and democratic freedoms.



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Secretary-Treasurer

March 16, 2015

### **Statement of IBEW President Edwin D. Hill regarding H-1B Visa Replacement Workers at Southern California Edison**

As president of a union representing skilled professionals in the electrical industry, I have seen firsthand how the H-1B visa program is being abused by companies which use it to replace skilled American workers with lower-paid, foreign nationals.

In August of 2014, Southern California Edison (SCE), a utility company with approximately 14 million customers and \$13.2 billion in annual revenues began firing its domestic information technology (IT) workforce in order to replace them with outsourced workers from India.<sup>1</sup> The outsourced workers are being brought to the United States under a temporary visa program for high-skilled personnel known as H-1B. Due to a gaping hole in immigration law SCE is able to get away with this reprehensible action by outsourcing these American jobs to Infosys and Tata Consultancy Services. The replacement workers are employees of Infosys and Tata, not SCE.<sup>2</sup>

As employees of Infosys and Tata, the H-1B workers will be paid considerably less than the Americans they replaced. The two Indian outsourcing firms pay their recruits an average of about \$65,000 to \$71,000 annually according to federal filings.<sup>3</sup> Compare that with SCE's domestic IT workers who previously earned \$80,000 to \$160,000 a year, according to records submitted to the California Public Utilities Commission.

By the time the transition is complete SCE will have outsourced the work of 500 American IT employees, 400 of whom are being laid-off and 100 of whom are leaving voluntarily. Approximately 70 percent of the IT work will shift overseas; about 20 percent of the jobs that remain in the U.S. will be done by foreigners holding H-1B visas.<sup>4</sup>

Adding insult to injury, many of the Americans slated to be laid off are being forced to train their H-1B replacements. If the American IT employees refuse or publicly protest they lose their severance packages or worse, as many were compelled to sign non-disparagement and confidentiality agreements.<sup>5</sup> These requirements are much like forcing a condemned prisoner to dig his own grave before execution.

In addition, SCE IT workers slated for dismissal have been denied the opportunity for other work within the company.

Clearly, the H-1B visa system is broken, and in a big way. SCE is not alone. Many other so-called "American" companies have exploited this loophole, replacing their existing IT staffs with H-1B workers from overseas. Such action, particularly following the worst recession since the Great Depression, is outrageous. Absent substantial reform, it's time to end the H-1B program.

<sup>1</sup> Ron Hira, "Congress and President Obama Cannot Sit Idly By While Companies Use H-1B Guestworkers to Replace American Workers," *EPI Blog*, Feb. 10, 2015, <http://www.epi.org/blog/congress-and-president-obama-cannot-sit-idly-by-while-companies-use-h-1b-guestworkers-to-replace-american-workers/>.

<sup>2</sup> *Id.*

<sup>3</sup> Michael Hiltzik, "A loophole in immigration law is costing thousands of American jobs," *The Los Angeles Times* [Los Angeles, CA] Feb. 20, 2015.

<sup>4</sup> "End H-1B visa program's abuse," *The Los Angeles Times* [Los Angeles, CA] Feb. 17, 2015.


<sup>5</sup> Patrick Thibodeau, "Southern California Edison IT workers 'beyond furious' over H-1B replacements," *Computerworld*, Feb. 4, 2015, <http://www.computerworld.com/article/2879083/southern-california-edison-it-workers-beyond-furious-over-h-1b-replacements.html>





## DEBUNKING THE MYTH THAT IMMIGRATION HARMS AMERICA


Economists, researchers at leading think tanks, and experts at top universities, along with the majority of Americans, overwhelmingly agree that legal immigration is good for our economy and essential to remaining competitive in a global marketplace. Yet immigration restrictionists continue to rely on flawed studies and non-representative anecdotes to argue that immigration harms America and American workers. As a large group of multi-industry associations, representing business leaders and millions of employers across the country, we join together to debunk several of the most common immigration myths.


### A FEW OF THE MOST COMMON IMMIGRATION MYTHS, AS COMPARED TO THE REAL FACTS:

- 

**MYTH:** Lowering the number of immigrants would free up jobs for American workers.  
**FACT:** Immigration helps create jobs for American workers.
- 

**MYTH:** Foreign workers displace American workers in the science, technology, engineering, and math (STEM) fields.  
**FACT:** Employment data show that there are not enough native-born STEM workers to fill available STEM jobs and foreign STEM workers are not displacing their native-born counterparts.
- 

**MYTH:** STEM professional wages are stagnant and immigrants in STEM professional jobs are not needed.  
**FACT:** Wages are increasing for STEM professionals and U.S. companies have hard-to-fill positions that require STEM degrees with specific skills.
- 

**MYTH:** Foreign workers take one in five jobs in America.  
**FACT:** Americans fill more than 91 percent of all jobs in America.
- 


**MYTH:** Lesser-skilled immigrants take jobs away from Americans without college degrees.  
**FACT:** The data show that immigration does not negatively impact American workers without college degrees. In fact, lesser-skilled immigrants create jobs for Americans and grow crucial sectors of our economy.


**MYTH : LOWERING THE NUMBER OF IMMIGRANTS WOULD FREE UP JOBS FOR AMERICAN WORKERS****FACT : IMMIGRATION CREATES JOBS FOR AMERICAN WORKERS**


Economic studies overwhelmingly find that immigration promotes economic growth and creates American jobs.

- Economists have used U.S. Applied General Equilibrium (USAGE) modeling, to examine job creation resulting from immigration. "With increases in low-skilled immigration, the U.S. economy would expand, creating more jobs in higher-skilled areas," concluded the CATO Institute. CATO found that, over time, increases in immigration would foster the ability of some workers now in low-paying jobs to move up the occupational ladder into different and sometimes newly created jobs.<sup>2</sup>
- Researchers looking at the impact of foreign-born high-skilled professionals working in the U.S. have found that foreign-born STEM workers coming to the U.S. "may explain between 10 and 25 percent of the aggregate productivity growth that took place in the U.S. between 1990 and 2010."<sup>3</sup>
- Immigrants also build and sustain new communities, which in turn produces economic growth for the country as a whole. A study<sup>4</sup> by the National Association of Home Builders (NAHB) found that under a baseline scenario of 1.2 million annual net immigration, such a population, after ten years, will occupy two million multifamily residences and 1.2 million single-family homes. Of these households, more than 900,000 will become homeowners. In addition to the taxes paid by these properties and the consumption generated by these households, the construction of these communities will also have direct economic benefits. According to a separate NAHB study,<sup>5</sup> every 1,000 single-family homes built generates enough economic activity to sustain for a year 2,970 jobs, while every 1,000 multifamily units sustains 1,130 jobs.

The American Enterprise Institute concluded that "policymakers could create jobs by making available more temporary visas for both skilled and less-skilled workers."<sup>1</sup>

 **4.64 MORE JOBS**  
are created for U.S.-born workers with the admission to the United States of each less-skilled, legal, non-agricultural temporary foreign worker

 **1.83 MORE JOBS**  
are created for U.S.-born workers with each approved H-1B high-skilled, legal, professional worker.

 **2.62 MORE JOBS**  
are created for U.S.-born workers for each foreign-born worker in the U.S. with a U.S. STEM graduate degree.

The Center for Immigration Studies has attempted to compare immigration totals to new job creation numbers<sup>6</sup> to draw conclusions about the appropriate level of legal immigration in the United States. But the labor market is not a zero sum game where a job either goes to an immigrant or an American. A meaningful analysis of the economic impact that immigrants have on the U.S. economy would require:<sup>7</sup>

- Understanding that jobs filled in the economy are not just newly created jobs but existing jobs that open up as older workers retire.
- Modeling the extent to which immigrants do not always compete with Americans for the same jobs.
- Explaining the various factors that impact movement in native unemployment since native unemployment often decreases even as immigration increases.
- Accounting for the large number of immigrants who enter the country with no intent to look for work but can support themselves (such as retired parents of U.S. citizens).
- Excluding naturalized American citizens from the immigrant count in such an analysis – they are not taking jobs from Americans since they are Americans.

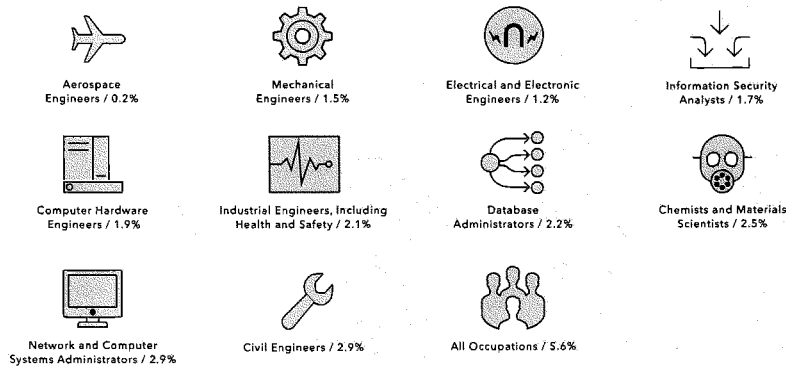
**MYTH : FOREIGN STEM WORKERS DISPLACE AMERICAN STEM WORKERS****FACT : EMPLOYMENT DATA SHOW THAT THERE ARE NOT ENOUGH NATIVE-BORN STEM WORKERS TO FILL AVAILABLE STEM JOBS AND FOREIGN STEM WORKERS ARE NOT DISPLACING THEIR NATIVE-BORN COUNTERPARTS**

Studies have repeatedly shown that there are not enough U.S.-born, college-educated STEM professionals to fill the jobs available here. In 2012, a research report produced by Change the Equation, a nonpartisan education advocacy organization, found that from 2009 to 2011, during a time of depressed employment, 1.91 STEM jobs were posted online for every one unemployed STEM worker looking for work in the United States.<sup>8</sup> In 2011, while the national

unemployment rate hovered at about 8 percent nationwide, U.S. citizens with PhDs in STEM had an unemployment rate of 3.15 percent. Those with Master's level degrees in STEM fields had one of 3.4 percent.<sup>9</sup> Importantly, studies have shown that there is no correlation between the STEM fields where foreign workers are more prevalent and native-born unemployment in those fields.<sup>10</sup>

In many STEM fields, there is, statistically, no native-born unemployment at all.

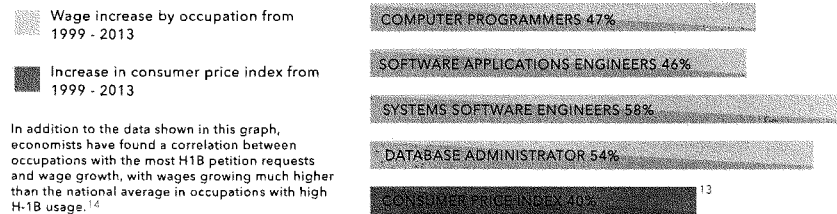
#### U.S.-BORN 2014 UNEMPLOYMENT RATES IN STEM OCCUPATIONS<sup>11</sup>



**MYTH:** STEM PROFESSIONAL WAGES ARE STAGNANT, A SIGN THAT THERE IS NO WORKER SHORTAGE, AND IMMIGRANTS IN STEM PROFESSIONAL JOBS ARE NOT NEEDED

**FACT:** WAGES ARE INCREASING FOR STEM PROFESSIONALS AND U.S. COMPANIES HAVE HARD-TO-FILL POSITIONS THAT REQUIRE STEM DEGREES WITH SPECIFIC SKILLS

Data shows that wages are increasing in STEM jobs requiring higher education, with wage increases an accepted indicator that the number of qualified Americans is insufficient to fill jobs being created. As the General Accountability Office concluded in 2014, "STEM occupations had more wage growth on average and lower unemployment rates than non-STEM occupations."<sup>12</sup> Longer-term trends suggest a similar point, with wage increases over time in fields like computer programming and software engineering.



Labor market experts interpret a job opening of longer than a month as another indicator that qualified candidates are hard to find, another indication of a shortfall in qualified and interested labor. Brookings Institution researchers found that jobs requiring STEM knowledge take significantly longer than one-month to fill. They concluded that 43 percent of job vacancies nationally for STEM occupations with H-1B requests are still posted after one month of advertising. This compared to 38 percent of vacancies in non-STEM occupations requiring a bachelor's degree that remain unfilled after one month and 32 percent of job postings for all non-STEM occupations.<sup>15</sup>

While it has been suggested anecdotally that wages for STEM professionals are stagnant because of the very presence of H1B workers, no studies show this to be the case. In what appears to be the only study to date specifically examining the impact of H1B workers on wages for American workers, the American Institute for Economic Research concluded in a 2014 analysis that no difference in wages can be attributed to H-1B visa status.<sup>16</sup> Another 2014 study concluded that for every 1 percent increase in H1B numbers there is a corresponding at least-7 percent increase in wages for American STEM workers.<sup>17</sup>

**MYTH : FOREIGN WORKERS TAKE ONE IN FIVE JOBS IN AMERICA.**

**FACT : AMERICANS FILL MORE THAN 91 PERCENT OF ALL JOBS IN AMERICA.**



The latest data from the Bureau of Labor Statistics and the Census Bureau<sup>18</sup> show that 91.4 percent of the U.S. workforce in December 2014 was made up of American citizens.<sup>19</sup> Only around one-in-twelve jobs or 8.6 percent of jobs in the United States are filled by workers who are not American citizens.

**MYTH : LESSER-SKILLED IMMIGRANTS TAKE JOBS AWAY FROM AMERICANS WITHOUT COLLEGE DEGREES.**

**FACT : THE DATA SHOW THAT IMMIGRATION DOES NOT NEGATIVELY IMPACT AMERICAN WORKERS WITHOUT COLLEGE DEGREES. IN FACT, LESSER-SKILLED IMMIGRANTS CREATE JOBS FOR AMERICANS AND GROW CRUCIAL SECTORS OF OUR ECONOMY.**

Cities experiencing the highest levels of immigration tend to have relatively low or average unemployment rates for those Americans that are lesser-educated. A 2012 analysis of census data by economist Jack Strauss, now of the University of Denver, found that cities with greater lesser-skilled immigration experience lower unemployment rates, lower poverty rates, and higher wages for lesser-educated Americans—they are not simply substitutes for one another.<sup>20</sup>

Some economists have presumed they would find a sizeable negative effect on wages and employment of those Americans without a college education as a result of immigration, but the data do not support this finding. For example, Gerald D. Jaynes, professor of Economics and African American Studies at Yale, launched a large-scale statistical analysis on this very subject but never found the expected results.<sup>24</sup>



Every once in a while opportunities have presented themselves to conduct real-world experiments on the impact of immigration on lesser-educated native workers. When 125,000 Cubans arrived in South Florida within a six-month time frame following the 1980 Mariel Boatlift, it was widely assumed that

newly-arrived Cuban immigrants would take jobs away from Americans who did not possess post-secondary degrees. About half of the "Marielitos" settled permanently in the Miami area, joining an already-sizeable Cuban community and immediately boosting the city's labor force by about 7 percent. In 1989, economist David Card from the University of California at Berkeley completed a detailed analysis on the impact of this 1980 influx of largely lesser-skilled and less-educated immigrant workers on the Miami labor market as compared to other comparison cities.<sup>21</sup> Card documented that the wages of lesser-skilled and less-educated workers in Miami actually fared better than in the control cities.<sup>22</sup> In 1981, the year after the boatlift, wages among lesser-skilled workers in Miami were slightly higher than they were in 1979.<sup>23</sup>

In fact, the employment projections for 2012-2022 by the Bureau of Labor Statistics show that two of the four major occupational groups that are projected to grow more than 20 percent - nearly double the overall growth - are lesser-skilled occupational groups that do not require post-secondary education: construction and extraction occupations (21.4 percent), and personal care and service occupations (20.9 percent). Indeed, some sectors have seen rising labor shortages, presenting significant industry challenges. For example, the number of open construction sector jobs as of December 2014 (147,000) stands at post-recession highs, and the job open rate exceeds that prior to the housing boom.<sup>6</sup>

Lesser-skilled immigrants help to fill labor shortages in these industries, creating jobs for Americans and helping those industries grow. As Americans become more educated, there are a declining number of young people willing and able to work lesser-skilled jobs, yet the demand for these jobs is growing. Between 1990 and 2010, the number of young, U.S.-born, lesser-skilled individuals declined by almost 12.3 million.<sup>7</sup> Meanwhile, sectors like healthcare are seeing increased demand for lesser-skilled jobs like home health aids, with not enough American workers to meet that need. Employment for Personal Care Aides and Home Health Aides is expected to grow by 48.8 percent and 48.5 percent, respectively, by 2022, while current unemployment for U.S.-born U.S. citizens is 2.9 percent in these human services assistant occupations, suggesting near full-employment.<sup>8</sup> Immigrants are helping to fill these gaps. For example, immigrants are twice as likely to be home health aids than the U.S.-born.<sup>9</sup> And, immigrants help job growth in many sectors.



IN AGRICULTURE, AN INDUSTRY UNABLE TO FILL ITS LABOR FORCE NEEDS WITHOUT IMMIGRANTS, THE U.S. DEPARTMENT OF AGRICULTURE HAS STATED THAT EACH FARM WORKER CREATES 3.1 UPSTREAM JOBS FOR AMERICANS IN PACKAGING, SHIPPING, MARKETING, AND INSURANCE FOR AGRICULTURE PRODUCTS.<sup>10</sup>



<sup>1</sup> Madeline Zavodny, "Immigration and American Jobs" (American Enterprise Institute, December 14, 2011) [https://www.aei.org/wp-content/uploads/2011/12/immigration-and-american-jobs\\_144002688962.pdf](https://www.aei.org/wp-content/uploads/2011/12/immigration-and-american-jobs_144002688962.pdf) at p.11, 14.

<sup>2</sup> Peter B. Dixon and Maureen T. Rimmer, "Restriction or Legalization? Measuring The Economic Benefits of Immigration Reform" (Cato Institute, April 13, 2009) <http://www.cato.org/pubs/tpa/tpa-040.pdf>.

<sup>3</sup> Giovanni Peri, Kevin Shih, and Chad Sparber, "STEM Workers, H-1B Visas and Productivity in U.S. Cities," Norface Migration Discussion Paper No. 2013-09 (Norface Research Programme on Migration, February 2013), [http://www.norface-migration.org/publ\\_uploads/NDP\\_09\\_13.pdf](http://www.norface-migration.org/publ_uploads/NDP_09_13.pdf)

<sup>4</sup> Natalia Sinkevskaya, "Immigrants and Housing Demand" (National Association of Home Builders, Aug. 3, 2012) <http://www.nahb.org/generic.aspx?sectionID=734&genericContentID=186289&channelID=311>

<sup>5</sup> Paul Emrath, "Impact of Home Building and Remodeling on the U.S. Economy" (National Association of Home Builders, May 1, 2014) <http://www.nahb.org/generic.aspx?sectionID=734&genericContentID=227858&channelID=311>.

<sup>6</sup> <http://cis.org/sites/cis.org/files/camarota-immigration-twice-job-growth.pdf>.

<sup>7</sup> There is plenty of research and reporting that does carefully analyze economic and statistical factors. Such research almost universally finds that immigration improves employment gains in the United States in a variety of ways including immigrant contributions to neighborhood revitalization and state and local economic growth. For example: Neighborhood Revitalization - immigration promotes neighborhood revitalization around the country since immigrants account for 28 percent of the nation's Main Street businesses, as described by in "Bringing Vitality to Main Street: How Immigrant Small Businesses Help Local Economies Grow" (Fiscal Policy Institute and Americas Society/Council of The Americas, by David Dyssegaard Kallick, January 2015) <http://fiscalspolicy.org/wp-content/uploads/2015/01/Bringing-Vitality-to-Main-Street.pdf>. State and Local Economies - there are many state-level reports on the positive impact of immigration on state economies, such as "Immigrant Contributions to Minnesota's Economy" (Minnesota Business Immigration Coalition, Americas Society/Council of the Americas, and the Partnership for a New American Economy, October 2014) <http://www.renewoureconomy.org/wp-content/uploads/2014/11/MN-Final-Brief.pdf>, and similarly many reports on the local positive impacts of immigration, such as an analysis of the positive impact of foreign STEM workers on the average American worker, by Giovanni Peri, Kevin Shih, and Chad Sparber in "Closing Economic Windows: How H-1B Denials Cost U.S.-Born Tech Workers Jobs and Wages During the Great Recession" (Partnership for a New American Economy, June 2014) [http://www.renewoureconomy.org/wp-content/uploads/2014/06/pnae\\_h1b.pdf](http://www.renewoureconomy.org/wp-content/uploads/2014/06/pnae_h1b.pdf). For an excellent bibliography on the economic impacts of immigration in the United States, with over 60 references covering all viewpoints (left, right, business, union, immigration restrictionist, and free market) as well as government data from the Bureau of Labor Statistics and other agencies and a summary review of how immigration benefits all Americans look at a Manhattan Institute issue brief issued in December 2014 from its E21 project (Economic Policies for the 21st Century), which also rebuts the flawed analytical approach of the Center for Immigration Studies (at p. 6-8) [http://www.manhattan-institute.org/pdf/e21\\_02.pdf](http://www.manhattan-institute.org/pdf/e21_02.pdf)

<sup>8</sup> "STEM Help Wanted: Demand for STEM Weathers the Storm" (May 2012) [http://changetheequation.org/sites/default/files/CTEq\\_VitalSigns\\_Supply%20%282%29.pdf](http://changetheequation.org/sites/default/files/CTEq_VitalSigns_Supply%20%282%29.pdf).

- <sup>9</sup> Information Technology Industry Council, Partnership for a New American Economy, and U.S. Chamber of Commerce, "Help Wanted: The Role of Foreign Workers in the Innovation Economy" (Nov. 20, 2012). Available here: <http://www.renewoureconomy.org/wp-content/uploads/2013/07/stem-report.pdf>.
- <sup>10</sup> Information Technology Industry Council, Partnership for a New American Economy, and U.S. Chamber of Commerce, "Help Wanted: The Role of Foreign Workers in the Innovation Economy" (Nov. 20, 2012). Available here: <http://www.renewoureconomy.org/wp-content/uploads/2013/07/stem-report.pdf>.
- <sup>11</sup> Compiled from Current Population Survey, a project of the Bureau of Labor Statistics and the Census Bureau. The data set is pooled monthly CPS samples for 12 months - December 2013 through November 2014. Observations do not include any of the social sciences and were weighted using the BLS composite monthly weight variable. Monthly weights were divided by 12, so totals are estimates of average monthly employment over the year. The 12 months of observations are the most recent 12 months available as of January 12, 2015.
- <sup>12</sup> "Science, Technology, Engineering, and Mathematics Education: Assessing the Relationship between Education and the Workforce" (GAO-14-374, General Accountability Office, May 2014) at p. 15.
- <sup>13</sup> See Bureau of Labor Statistics, 2013 Wage Estimates [http://www.bls.gov/oes/current/oes\\_nat.htm](http://www.bls.gov/oes/current/oes_nat.htm). 15-year wage changes tabulated December 19, 2014.
- <sup>14</sup> Jonathan T. Rothwell and Neil G. Ruiz, "H-1B Visas and the STEM Shortage: A Research Brief" (Brookings Institution, May 2013) [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2262872](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2262872) and <http://www.brookings.edu/research/papers/2013/05/10-h1b-visas-stem-rothwell-ruiz>.
- <sup>15</sup> *Id.* The Brookings analysis reviewed over 50,000 job openings, and found that those requiring STEM knowledge take significantly longer to fill, even controlling for requirements for education, experience, training, and managerial knowledge, as well as wage rates and metropolitan area location. The most commonly requested H-1B occupations in each metropolitan area also take longer to fill.
- <sup>16</sup> Nicole Kreisberg, "H-1B Visas: No Impact on Wages" (AIER issue brief, October 9, 2014) <https://www.aier.org/research/h-1b-visas-no-impact-wages>. The AIER issue brief incorrectly substitutes Labor Condition Applications (LCAs) filed at the Department of Labor for "H-1B Visas Requested" (in Table 1). While LCAs could be a substitute proxy to indicate H-1B demand (when labeled and explained), there is no direct correlation between the number of positions noted on LCAs and either H-1B petitions filed or H-1B visas requested.
- <sup>17</sup> See, Giovanni Peri, Kevin Shih, and Chad Sparber, "STEM Workers, H-1B Visas and Productivity in U.S. Cities," Norface Migration Discussion Paper No. 2013-09 (Norface Research Programme on Migration, February 2013), [http://www.norface-migration.org/pubUploads/NDP\\_09\\_13.pdf](http://www.norface-migration.org/pubUploads/NDP_09_13.pdf); Giovanni Peri, Kevin Shih, and Chad Sparber, "Foreign STEM Workers and Native Wages and Employment in U.S. Cities" (National Bureau of Economic Research (NBER) Working Paper No. 20093, May 2014) at Table 9.
- <sup>18</sup> The Current Population Survey (CPS) is the source of data comparing native-born workers to foreign-born workers. CPS is a joint project of the Bureau of Labor Statistics (BLS) and Census Bureau, with much of the data being published by BLS. Much of the data is also republished by the Federal Reserve Economic Data system (FRED) where excellent interactive graphs are available on the number of native-born and foreign-born workers employed 2007 to the present (<http://bit.ly/1BeZ0K1>) and the total number of foreign-born and foreign born in the civilian workforce (<http://bit.ly/1Ch3fXp>).
- <sup>19</sup> The CPS data published by BLS and the Census Bureau for December 2014 show that 83.55% of the civilian workforce is native-born American citizens and that 7.85% of the civilian workforce is naturalized American citizens, so that 91.4% of the civilian workforce is American citizens. The same data show that 83.45% of employed workers as of December 2014 are native-born American citizens and that 7.96% of employed workers are naturalized American citizens, again totaling the same 91.4% of the nation's economy as American workers. Some references to "workers" can be ambiguous, as to whether identifying those employed or those both employed and unemployed (ie, workforce) so both breakdowns are provided here.
- <sup>20</sup> Jack Strauss, Miller Chair of Applied Economics, University of Denver, "Does Immigration, Particularly Increases in Latinos, Affect African American Wages, Unemployment and Incarceration Rates?" (Social Science Research Network, December 8, 2012), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2186978](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2186978).
- <sup>21</sup> David Card, "The Impact of the Mariel Boatlift on the Miami Labor Market," National Bureau of Economic Research (Aug. 1989) at 2.7.
- <sup>22</sup> *Id.* at 10-11, 13-15.
- <sup>23</sup> *Id.* at 10-11, 13-15.
- <sup>24</sup> Gerald D. Jaynes, "A Conversation about the Economic Effects of Immigration on African Americans," Immigration Policy Center (July 2009). <http://www.immigrationpolicy.org/sites/default/files/docs/Gerald%20Jaynes%20071409.pdf>.
- <sup>25</sup> [www.bls.gov/news.release/pdf/ecopro.pdf](http://www.bls.gov/news.release/pdf/ecopro.pdf)
- <sup>26</sup> Robert Dietz, "Construction Labor Market: Quits Jump, Hiring and Job Openings Rise" (National Association of Home Builders, February 10, 2015) [http://eyeonhousing.org/2015/02/dec\\_jobs/](http://eyeonhousing.org/2015/02/dec_jobs/).
- <sup>27</sup> Frank Bean, "A Crucial Piece of the Puzzle," (Partnership for a New American Economy, March 27, 2014), <http://www.renewoureconomy.org/wp-content/uploads/2014/03/less-skilled-final.pdf>
- <sup>28</sup> Many parts of the U.S. economy are suffering from unfilled jobs that employers wish to fill. As of December 2014, data from the U.S. Bureau of Labor Statistics Job Openings and Labor Turnover Survey (JOLTS) indicated that total unfilled, non-farm job openings in the U.S. stood at more than 5 million positions, the highest in the last decade. The job openings rate (3.5%), which is job openings as a percent of total employment, was also at a series high. It was 2.8% a year ago.
- <sup>29</sup> Audrey Singer, "Immigrant Workers in the U.S. Labor Force," (Partnership for a New American Economy and Brookings Institution, March 15, 2012) [http://www.brookings.edu/~media/research/files/papers/2012/3/15%20immigrant%20workers%20singer/0315\\_immigrant\\_workers\\_singer.pdf](http://www.brookings.edu/~media/research/files/papers/2012/3/15%20immigrant%20workers%20singer/0315_immigrant_workers_singer.pdf).
- <sup>30</sup> See, e.g., Hearing to Review the Labor Needs of American Agriculture, before the House Committee on Agriculture, October 4, 2007. <http://www.gpo.gov/fdsys/pkg/CHRG-110hhrg48999/html/CHRG-110hhrg48999.htm>.
- <sup>31</sup> Tim Kane, Hoover Institution, "The Economic Effect of Immigration" (February 17, 2015) <http://www.hoover.org/research/economic-effect-immigration>.





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March 25, 2015

Hon. Ron Johnson, Chairman  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
340 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Johnson,

On behalf of Jobs With Justice, I respectfully request that the brief comments below be made a part of the official record for the Senate Homeland Security and Governmental Affairs Committee hearing entitled, *Securing the Border: Defining the Current Population Living in the Shadows and Addressing Future Flows*, that will be held on Thursday, March 26, 2015 at 10 a.m.

Thank you for the opportunity to share our thoughts on this important issue.

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Jobs With Justice is an independent nonprofit organization dedicated to promoting workers' rights and fighting for an economy that benefits all workers. We bring together labor, community, faith and student voices at the national and local levels through a network of coalitions across the country. We work to create innovative solutions to the problems all workers face today utilizing research, analysis, organizing and public advocacy.

Through this work we have gained knowledge about issues affecting workers at the intersection of immigration and labor policy. This includes research intended to better understand how employer use of temporary nonimmigrant employment visa programs impacts workers, graduates, and the U.S. labor market. It is with that insight that we offer our comments today.

Jobs With Justice strongly supported S. 744, which passed the Senate on a bipartisan basis in June 2013 and would have provided a permanent solution for our broken immigration system. It notably would have offered a long-awaited road map to citizenship for the 11 million undocumented members of our communities and secured stronger labor protections for all workers. It is important to recognize that the ability to work with status is the single most important protection for immigrant workers as it helps ensure that bad employers cannot use the threat of immigration enforcement to keep them trapped in the shadows of our economy. S. 744 also would have established a new "W" employment visa program, developed through substantial negotiations between business and labor. The W visa serves as a model for how employment visa programs can be designed to meet their true function of offering access to foreign workers on a temporary basis when U.S. workers are unavailable, while also offering real safeguards for workers.

That notwithstanding, Jobs With Justice opposed the provision of S. 744 that expanded the H-1B program while allowing employers to bypass equally or better qualified U.S. workers. This provision also reduced protections for U.S. workers who may lose their jobs due to H-1B hiring, allowed employers to continue paying below the average local wage, and denied H-1B workers the opportunity to self-petition for green cards. In effect, this section of S. 744 enhanced the H-1B visa program as a tool for employers

looking to lower wages and drive down standards across our economy. It sold out U.S. workers and future graduates in STEM fields.

There is a role for employment-based migration in the U.S. economy, but it is not as a tool for upending labor market standards. All workers, along with employers who are playing by the rules, suffer when employers use temporary employment visa programs to find a cheaper, easily exploitable workforce. Just this month, Filipino workers here on E-2 visas filed a federal lawsuit against their employer, a California bakery, alleging wage and hour violations, including being paid as little as \$2.00 per hour and working 17 hour days without overtime compensation.<sup>1</sup>

As the committee, and Congress as a whole, considers proposals to address future flows, it must ensure temporary employment visa programs protect both citizen workers and the foreign workers hired through the programs. These protections should extend to the foreign labor recruitment process, where workers far too often encounter fraud, coercion, and exploitation.

Thank you for the opportunity to briefly offer Jobs With Justice's views on addressing future flows. We hope the committee puts workers first as it conducts business in this Congress.

Sincerely,



Sarita Gupta  
Executive Director, Jobs With Justice

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<sup>1</sup> Linthicum, K. (2015, Mar. 19). "Beverly Hills bakery workers say they were paid as little as \$2 an hour." *Los Angeles Times*. Retrieved from: <http://www.latimes.com/local/lanow/la-me-ln-guest-worker-visa-lawsuit-20150319-story.html>.


**National Association of Home Builders**

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March 25, 2015

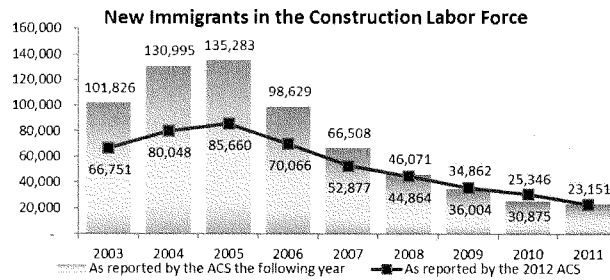
The Honorable Ronald Johnson  
Chairman  
U.S. Senate Committee on Homeland Security and Governmental Affairs  
328 Hart Senate Office Building  
Washington, DC 20510

Dear Chairman Johnson:

On behalf of the more than 140,000 members of the National Association of Home Builders (NAHB), I am writing to express NAHB's appreciation to you and the Senate Homeland Security and Governmental Affairs Committee for continuing this important discussion on the shadow economy and immigrant worker flows. In addition to strong border security and mandatory E-Verify,<sup>1</sup> NAHB supports the creation of a temporary, market-based guest worker program to stabilize the workforce and address the industry's labor needs. The current visa system lacks a program to allow construction workers into the country on a temporary basis, and many cite this dearth in the current legal system as contributing factor to the underground labor economy.

The home building industry, with the contribution of a substantial immigrant workforce, plays a critical role in sustaining the national economy and meeting the nation's housing needs. Today, foreign-born workers account for 23% of the construction labor force nationally.

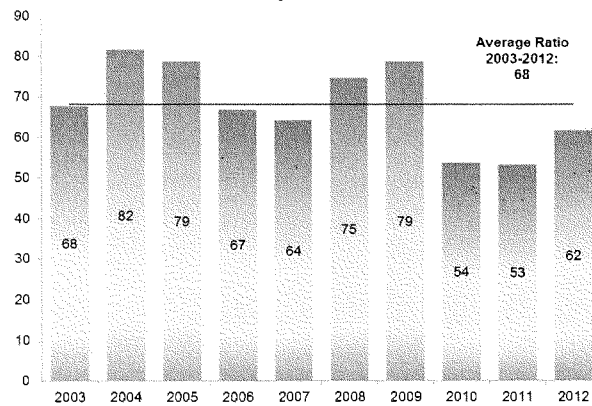
The annual flow of immigrant workers into the construction sector is highly correlated with measures of new home construction, especially new single-family home construction. Using the 2004–2012 American Community Surveys (ACS), NAHB economists estimate that the immigrant labor flow into construction varied from more than 135,000 in 2005 to 23,151 immigrant workers in 2011.



<sup>1</sup> NAHB supports H.R. 1147, the *Legal Workforce Act*, which creates a fair, efficient, and workable employment verification system for the employer community.

The immigrant labor pool is highly flexible and responds quickly to the changing economic environment. While the net number of immigrant flow varies with the housing economy, there is a general rule of thumb that 68 foreign workers enter the construction workforce for every 1,000 single-family housing starts.

**Figure 2. New Immigrants in Construction Per 1,000 Single-Family Starts**



The improvement in housing markets has been a welcome change for the economy. However, this turnaround presents new labor challenges for the construction industry. According to the BLS Job Openings and Labor Turnover Survey (JOLTS), there were 120,000 open construction sector jobs in December 2014. This confirms NAHB's internal survey data, which shows that shortages of skilled labor are driving up costs and impeding a more robust housing recovery. In recent surveys, 46 percent of the builders surveyed experienced delays in completing projects on time, 15 percent of respondents had to turn down some projects, and 9 percent lost or cancelled sales as a result of recent labor shortages.

Despite the uptick in labor shortages, housing remains a major job creator. In February, home builders and remodelers added 16,700 jobs to the residential construction sector on a seasonally adjusted basis. Over the last 12 months, the industry has created 168,000 jobs. However, future growth for the 77 percent of the American-born workforce is dependent on an adequate and effective future flow program.

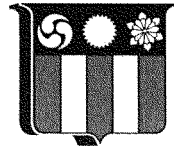
While housing remains a major job creator, employment remains 1.014 million lower than the peak level seen in early 2006. For these reasons, NAHB believes strongly that the nation should implement a new market-based visa system that would allow more immigrants to legally enter the construction workforce each year. Despite our efforts to recruit and train American workers, our industry faces a very real impediment to full recovery if work is delayed or even cancelled due to worker shortages. A new, market-based visa program would complement our skills training efforts within the nation's borders and fill the labor gaps needed to meet the nation's housing needs.

NAHB stands ready to work with the Senate Homeland Security Committee as it deliberates on immigrant flow policies and ways to reform the current immigration system. We strongly urge you to consider the creation of a temporary market-based guest worker program that will divert unauthorized immigration into the legal system, shrink the informal economy, and support economic growth in the United States.

Thank you for considering our views.

Sincerely,

James W. Tobin III



NRCA

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March 26, 2015

The Honorable Ron Johnson  
Chairman, Committee on Homeland Security and Government Affairs  
U.S. Senate  
Washington, DC 20510

Dear Mr. Chairman,

The National Roofing Contractors Association (NRCA) commends you for holding a hearing of the Senate Committee on Homeland Security and Government Affairs entitled "Securing the Border: Defining the Current Population Living in the Shadows and Addressing Future Flows." NRCA appreciates the opportunity to submit this letter outlining our views for the hearing record.

Established in 1886, NRCA is one of the nation's oldest trade associations and the voice of professional roofing contractors worldwide. NRCA has approximately 3,500 contractors in all 50 states who are typically small, privately held companies, with the average member employing 45 people and attaining sales of about \$4.5 million per year.

Today, workforce development issues are one of the top challenges facing roofing contractors nationwide. NRCA members have experienced significant difficulties in obtaining workers even during the period of weak economic growth that the construction industry experienced in recent years. As the U.S. economy continues to recover, NRCA members expect worker shortages in our industry to become more acute and sustained unless a well-structured, effective temporary worker program is established to meet the demands of a dynamic economy.

NRCA has long supported immigration reform that increases border security, improves workplace enforcement without burdening employers, provides an avenue for workers to enter the U.S. legally when our economy needs them, and addresses the problem of the existing illegal workforce in a balanced manner. Consistent with these goals, NRCA was a founding member of the Essential Worker Immigration Coalition in 1999.

NRCA supports immigration reform that is governed by market forces, protects U.S. workers, and provides a legal avenue that enables our nation's job creators to obtain the workers needed to meet demand and grow their businesses and the economy. Our members greatly prefer to hire

U.S. workers, but experience demonstrates this is not always possible within the roofing industry. The difficulty of finding a sufficient number of workers for job openings has been a serious problem for the roofing industry for many years, despite vigorous efforts by contractors to recruit U.S. workers. This is due to the demographic trends of an aging workforce and the extremely difficult and physically demanding nature of roofing work. The U.S. Bureau of Labor Statistics projects employment in the roofing industry is expected to grow by 18 percent in the decade between 2010 and 2020.

NRCA supports the creation of a temporary worker program that is governed by market forces, protects U.S. workers, and enables employers to obtain the workers needed to grow their businesses and create jobs in our industry. Specifically, a successful temporary worker program should be guided by the following principles:

- It must be governed by market force;
- It must ensure employers undertake vigorous efforts to hire U.S. workers first;
- It must be streamlined and easy to use for employers;
- It must accommodate the economy's constantly fluctuating need for temporary workers depending on economic conditions; and,
- It should treat all sectors of the economy equally and should not pick winners and losers.

NRCA believes it is essential to provide a legal avenue for employers to obtain temporary workers in order to eliminate the problem of illegal immigration. A fatal flaw of the 1986 immigration reform law was that it failed to provide a mechanism for foreign workers to fill job openings legally when needed in the lesser-skilled economic sectors. Congress must not repeat this mistake in any legislation that truly fixes our broken immigration system.

Again, NRCA wishes to commend you for holding this hearing and your efforts to build consensus on immigration reform. NRCA looks forward to working with you and other lawmakers to develop effective immigration reform solutions that address the needs of employers in the roofing industry. For more information on NRCA's views, please contact Duane Musser, vice president of government relations, at 202-546-7584 or [dmusser@nrca.net](mailto:dmusser@nrca.net).

Thank you for your consideration of NRCA's views on this vitally important issue.

Sincerely,



Rich Nugent  
Nations Roof LLC  
President, NRCA